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ABSTRACT

This report focuses on the impact of the Federal Gun-Free Schools Act (GFSA) in the Michigan public schools. The research for this study was conducted as a project of the Ann Arbor-based Student Advocacy Center. The study's purpose is twofold: (1) explore the implications of Michigan's zero-tolerance policy for educational equity and equal opportunity; and (2) analyze the impact of state law on the lives of expelled students and their families. The 100 school districts selected for analysis were chosen according to geographic location, diversity of population, and annual rate of per-pupil spending. Freedom of Information requests were sent to all 100 superintendents asking for expulsion data from the 1995-96 and 1996-97 school years, disaggregated according to race, gender, special-education status, and free-lunch eligibility. Sixty-four districts responded with varying degrees of compliance. In addition to the district data, interviews with expelled students and their families were conducted. Civil-rights officials, local law-enforcement officers, superintendents, and mental-health professionals were also consulted for their opinions on the zero-tolerance policy.. Results indicate that school officials often apply the policy in an arbitrary and capricious manner. Typically, the grounds for expulsion were not found in the mandatory section of the state law. (RJM)

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MANDATORY EXPULSION REQUIREMENTS AND THE EROSION OF EDUCATIONAL OPPORTUNITY IN MICHIGAN

A Report by the Student Advocacy Center of Michigan

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A Report by the
Student Advocacy Center of Michigan

February 1999

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Foreword

Amidst the swirling debates about school reform and school choice, the waning commitment to universal education is scarcely noticed. Belief in the essential importance of an informed electorate to a vibrant democracy has been replaced by allegiance to an increasingly elitist and exclusionary society. Not only our children but also our public education system is at great risk.

In Michigan, mandatory expulsion requirements (zero tolerance) have taken on a life of their own. In addition to those weapons, rape and arson offenses identified under the recent mandatory section of the Michigan School Code, more and more districts are removing children for vague offenses with vague criteria for length of exclusion and arbitrary and uncertain criteria for re-entry. Justification of these actions are a muddle of mandatory language and, until recently, rarely used Michigan School Code language that allows for expulsion for gross misdemeanor or persistent disobedience. In neither case is there a requirement to provide alternative education, other necessary supports, or supervision.

Every expulsion is, by law, a permanent action, although parents may petition a school board to consider re-admission. Children who are expelled for weapons offenses must remain out of school for at least one year unless they are in kindergarten through fifth grade, in which case they may ask to be reinstated after six months. Children expelled for other than weapons violations may apply for re-admission at any time. In any case, there is no requirement or guarantee that a school board will approve the request for admission. Reinstatement under all circumstances studied appears to occur less than 50 percent of the time.

The mandatory expulsion law was marketed as a way to stop dangerous "punks," older adolescents with guns. In reality, instead of netting sharks, the law and its attendant policies and practices is catching minnows — young children who are often frightened, sometimes thoughtless, rarely dangerous, but now clearly endangered.

Ruth Zweifler
Executive Director

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1

Introduction

Kip Kinkel, Mitchell Johnson, Andrew Golden. They have become household names, and the stories of their crimes have graced the front pages of major newspapers and journals, bringing school violence back into the national media spotlight. Despite years of research and escalating public concern about its dangers, violence in the schools continues to plague communities across the country. Although Department of Education studies do not reveal a statistically significant rise in juvenile crime over the last two decades,[1] the recent spate of shootings in West Paducah, Kentucky; Jonesboro, Arkansas; and Springfield, Oregon has left the nation wondering why some students resort to such violent means to express their anger. Yet unlike Great Britain, which immediately passed legislation outlawing handguns following a schoolyard massacre in Scotland, the United States has yet to develop a similar legislative response.[2]

The explanations for this disturbing trend in youth violence are manifold. Some argue that there has been a significant rise in mood disorders and suicide among teenagers, fueled by widespread and often undiagnosed clinical depression.[3] Indeed, all of the recent perpetrators of violent acts claimed that they felt ostracized and alienated from their peers.[4] Others argue that teen angst has always caused kids to act out, but the availability of guns suddenly turns a typical adolescent outburst into a potentially life-threatening situation. As Geoffrey Canada, president of the Rheedlen Centers for Children and Families in Harlem, argues "Without access to guns, these kids might break a couple of windows...it would be a pain, but it wouldn't be mass murder."[5] This position is supported by many academicians who argue that children are not solely to blame. Bernardine Dohrn of the Children and Family Justice Center at Northwestern University points out "...American adults are fascinated with violence. This is about guns and the way they permeate this society."[6] In some cases, organizations such as the National Shooting Sports Foundation have actually marketed guns to students while they are in school.[7] This analysis certainly holds true in the two most recent school massacres, both of which involved students stealing guns from family members. In Jonesboro, Mitchell Johnson and Andrew Golden obtained a veritable arsenal from the home of Golden's grandfather, who worked on a fish and game reserve.[8] In Springfield, Oregon Kip Kinkel owned several guns that he had received as presents. He had merely to unlock a safe to get his gun, which he used to shoot his parents and classmates.

In all of the cases, the assailants-to-be gave off clear signals of impending aggression. Carneal warned his eventual victims not to attend the Monday morning bible group where they were shot.[9] Many analysts cite connections between *The Basketball Diaries*, a film involving a violent dream sequence, and Michael Carneal's classroom shooting spree in West Paducah, Kentucky.[10] Carneal even admits the possible influence of the movie, and told a teacher that "it was like I was in a dream."[11] Kip Kinkel read aloud a passage of his journal about killing other students[12] yet none of these warnings were heeded, and no counseling or psychological services were provided. Kinkel was expelled from school after being caught with a gun the day before the shooting.

However, no one intervened following the expulsion, thereby further isolating and marginalizing an already angry and frustrated young man.

In spite of these horrifying stories of schoolyard massacres, Department of Justice figures show that juvenile arrests for violent crime are actually declining, and today's juvenile offenders are not committing more violent acts than their counterparts of 15 years ago.[13] But the number of incidents involving guns has increased dramatically: while only 74 gun-related murders were committed by 13–14-year-olds in 1980, the figure skyrocketed to 178 in 1995,[14] reinforcing the argument that increased access to firearms has contributed to today's crisis. The most significant change has been in public opinion, however. Whereas a few decades ago academicians and politicians would have been struggling to understand where these children went wrong, today legislators such as Jim Pitts of Texas are proposing extension of the death penalty to offenders as young as eleven.[15] While Pitts' position represents the extreme of today's trend of punitive policymaking, a shift of emphasis from the traditional model of juvenile rehabilitation[16] to one of harsh punishment is visible throughout the nation. Perhaps the most widespread manifestation of this policy shift is the almost universal use of "zero-tolerance" laws to punish and expel students who bring weapons to school. As the State of Michigan has one of the harshest zero-tolerance policies in the nation,[17] and one of the poorest data reporting records, it was chosen as the focus of this study.

NOTES

1. Tamar Lewin, "Study Finds No Big Rise in School Crime," *New York Times*, 25 March 1998, 20(A).

2. Ellen O'Brien, "Guns and Rage: Can We Stop Troubled Teens Who Are Mad Enough to Kill?" *Ann Arbor News*, 31 May 1998, 3(A).

3. Tim Egan, "From Adolescent Angst to School Killings," *New York Times*, 14 June 1998, 1(A) et seq.

4. Ibid., 1(A) et seq.

5. Geoffrey Cowley, "Why Children Turn Violent," *Newsweek*, 6 April 1998, 24–26.

6. O'Brien, "Guns and Rage," 3(A).

7. Editorial in *Mother Jones*, January–February 1995, 15: "In a 1993 issue of S.H.O.T. business, its industry publication, a columnist tells dealers and manufacturers: 'There's a way to help ensure that new faces and pocketbooks will continue to patronize your business. Use the schools. Every decade there is a whole new crop of shining young faces taking their place in society as adults. Will they be for or against a local ordinance proposal to ban those bad semiautos? How else would you get these potential customers and future leaders together? Schools are the opportunity. Grasp it.'"

8. Cowley, "Why Children Turn Violent," 21–22.

9. Blank and Cohen, "Prayer Circle Murders," 26.

10. Jonah Blank and Warren Cohen, "Prayer Circle Murders," *U.S. News and World Report*, 15 December 1997, 25.

11. Daniel Pedersen and Sarah Van Boven, "Tragedy in a Small Place," *Newsweek*, 15 December 1997, 30.

12. Egan, "From Adolescent Angst to School Killings," 1(A) et seq.

13. Department of Justice as quoted in Annette Fuentes, "The Crackdown on Kids," *Nation*, 15–22 June 1998, 20.

14. Ibid., 20.

15. Ibid., 20.

16. See Bernardine Dohrn, "Children and the Law," *Criminal Justice*, Summer 1995, 9–10.

17. Paul M. Bogos, "'Expelled, No excuses, No exceptions': Michigan's Zero-Tolerance Policy in Response to School Violence: M.C.L.A. 380.1311," *University of Detroit Mercy Law Review* 74 (1997): 359.

2

Background to the Study

On January 1, 1995 a new "zero-tolerance" law took effect in the Michigan public schools. The legislation mandated the permanent expulsion of any student bringing a "dangerous weapon"[1] to school, committing arson on school property, or engaging in criminal sexual conduct (CSC). In addition, old statutes authorizing expulsion for "gross misdemeanors" and "persistent disobedience" were left intact.[2] Instead, the law forbids students expelled for weapons violations from enrolling in other Michigan school districts. The new law put an end to the era of rehabilitative school discipline and marked the beginning of punitive policymaking. Whereas students were once seen as redeemable and were perhaps reprimanded with short term suspensions, now expulsion has become acceptable. While certain districts have insisted on protecting their local authority to make discretionary decisions on disciplinary matters,[5] the majority of schools have followed the guidelines provided by the state, leaving little latitude to exercise reasonable judgment before deciding to deprive children of an education. Although the law does include several exception clauses, which recognize a variety of mitigating circumstances and attempt to address the issue of intent, these provisions are often ignored by local school boards and school officials, much to the dismay of children's advocates and civil liberties lawyers across the state.

The zero-tolerance law was created in order to comply with the Federal Gun-Free Schools Act of 1994, which required all states to pass legislation mandating at least a one-year expulsion for students carrying firearms on school property.[6] Furthermore, it required each local educational agency to provide the state with "a description of the circumstances surrounding any expulsions imposed under the State law..."[5] which would then be forwarded to the United States Department of Education (USDE) on an annual basis.[6] Yet ironically data regarding expulsions in Michigan is not collected by the state in a systematic manner, thereby constituting a violation of federal law. Earlier legislation mandating reporting to the Michigan Department of Education (MDE) has since been repealed,[7] leaving a dearth of available information. The former Department of Social Services now known as the Family Independence Agency (FIA) has collected limited amounts of data based on referrals to their agency by school officials.[8] These incomplete data still reveal that a great many students have been permanently expelled from school since the passage of Michigan's zero-tolerance law. However, this information does not by any means provide a comprehensive picture of the situation in Michigan schools, because approximately half of the districts have failed to refer their expelled students to the FIA, despite a legislative mandate requiring them to do so.[9] Nevertheless, the scanty FIA data paint a disturbing picture. A disproportionate number of the expelled students are African-American, and in many districts the majority are under the age of 16, the cutoff for compulsory attendance in Michigan. These figures corroborate the findings of the USDE's Office for Civil Rights, and the Michigan Advisory Committee to the United States Commission on Civil Rights.[10]

NOTES

1. As defined in *Michigan Compiled Laws, Annotated* (West, 1998) at sec. 380.1311 as: "A firearm, dagger, dirk, stiletto, knife with a blade over 3 inches in length, pocket knife opened by a mechanical device, iron bar, or brass knuckles."

2. Ibid., sec. 380.1311

3. See Olivet Community Schools, *School Board Minutes*, 8 May 1995 and 26 February 1997.

4. *Gun Free Schools Act*, *U.S. Code*, vol. 20, sec. 8921 (1994)

5. Ibid., sec. 8921 (d)

6. Ibid., sec. 8921 (e)

7. See Michigan Public Acts, 1990, No.207; 1991, No.218; 1993, No. 336, §3.

8. Family Independence Agency, *Weapons in Schools (Act No. 328, Public Act of 1994) Final Report of Referrals Received*, (Lansing, 25 July 1997), 1

9. *Michigan Compiled Laws, Annotated* sec. 380.1311(4)

10. Michigan Advisory Committee to the U.S. Commission on Civil Rights, *Discipline in Michigan Public Schools and Government Enforcement of Equal Education Opportunity*, (Chicago: U.S. Commission on Civil Rights, March 1996)

3 Research Design and Methodology

This report focuses on the impact of the Federal Gun-Free Schools Act (GFSA) in the Michigan public schools. The research for this project was conducted as a project of the Ann Arbor based Student Advocacy Center of Michigan, a non-profit advocacy group supporting student access to equitable, quality public education. The purpose of this study is twofold: 1) to explore the implications of Michigan's zero-tolerance policy for educational equity and equal opportunity in our state, and 2) to analyze the impact of state law on the lives of expelled students and their families. In order to gain a more comprehensive understanding of the expulsion law's effects it was necessary to collect statistical information from individual school districts, as no accurate data exists at the state level.

The 100 school districts selected for analysis in this study were chosen according to geographic location, diversity of population, and annual rate of per pupil spending in order to ensure a representative cross section of the state's 557 districts. Hence the sample ranges from the far reaches of Northern Michigan to the industrial Southeast. It includes districts such as Detroit and Benton Harbor with African-American populations of more than 85 percent, and districts such as Cadillac and Traverse City where fewer than 5 percent of the enrolled students are minorities. Funding levels differ dramatically as well. For example, the East Lansing Public Schools operate on a budget of $7,891 per pupil per year while Cadillac Schools spend only $4,797 annually on each student.[1]

Freedom of Information[2] requests were sent to all 100 superintendents asking for expulsion data from the 1995–1996 and 1996–1997 school years, disaggregated according to race, gender, special education status, and free lunch eligibility. In addition, information on students' placement following expulsion, such as referrals to state agencies, reinstatement, and alternative education placement was requested (see Appendix A). Sixty-four districts responded with varying degrees of compliance. Some districts sent almost all of the requested information, while others refused to send anything until compelled by legal threats.[3] Many districts claimed that they did not collect data on expulsion. And where data were available they were often not disaggregated according to race or gender, and in some cases did not even specify the violation warranting expulsion. Still others did not respond at all.

In addition to the collection of quantitative data this project focused on the real life impact of public policy. Several interviews were conducted with expelled students and their families in districts across the state. Their stories reveal disturbing truths about the state's zero-tolerance policy, and suggest that it is often applied in an arbitrary and capricious manner by local school officials, with little or no provision of constitutionally protected due process rights. Often, the grounds for expulsion were nowhere to be found in the mandatory section of the state law. Such was the case for a middle school student expelled for bringing a lighter to school, and a high school student expelled for cleaning his nails with a pocketknife.

Moreover, interviews reveal that exclusion from school leads to increased apathy, lowered self-esteem, family turmoil, and distrust of school officials, who

were often cited as unfair and perceived as likely to abuse their power. All interviewees expressed dismay over their respective school districts' lack of commitment to providing alternative education for students once they had been expelled. Despite severely decreased motivation, most students interviewed claimed that they would prefer to be in school, but felt as if they were not wanted at their former school or in any school, thereby increasing their sense of marginalization.

In addition, interviews were conducted with officials at the USDE'S Office for Civil Rights and the Office for Safe and Drug-Free Schools in Washington DC. Also, local law enforcement officers, superintendents, and mental health professionals were consulted for their perspectives on zero-tolerance policy in the public schools. The perspectives of these public officials offer important insights that should help shape more equitable and effective policy alternatives that would benefit the students of Michigan, and ultimately all of its citizens.

NOTES

1. Michigan Department of Education, *Selected Financial Data 1995–1996, Bulletin 1014*, (Lansing, 1997)
2. *Michigan Compiled Laws, Annotated Section* 15.240, et seq.
3. Student Advocacy Centre files.

Inaccessible Data and Unenforced Reporting

4

Each local educational agency requesting assistance from the State...shall provide to the State... a description of the circumstances surrounding any expulsion...including: the name of the school concerned; the number of students expelled from such school; and the type of weapons concerned.

Federal Gun-Free Schools Act of 1994[1]

There are two government agencies charged with collecting data on school discipline; those data are sparse and virtually nonexistent...Such data collection has not occurred and is still not occurring...

Michigan Advisory Committee to the U.S. Commission on Civil Rights[2]

The Gun-Free Schools Act of 1994 (GFSA) is best known for issuing a federal mandate compelling all states to comply with its provisions or otherwise risk losing their funding.[3] However, the Act also required states to collect data on gun-related expulsions and compile them in an annual report, which is to be forwarded to the United States Department of Education (USDE).[4] Yet four years after its passage many states have yet to comply with this provision. In fact, the USDE *Report on State Implementation of the Gun-Free Schools Act* indicates that many states did not furnish the department with all of the requested information and warns readers: "All of the information contained in this report should be interpreted with caution. First...some states attached caveats and data notes to their data...Second, some states submitted aggregate data that was not broken out by school level and/or type of weapon."[5] Soon after this study was released, *Education Week* published an article entitled "Officials Call Gun Report Proof of Crackdown," using data from the study.[6] While the author acknowledges that a large number of states had not provided complete data, and that the true number of expulsions was likely to be much higher, it remains disturbing that an admittedly flawed study is receiving national attention and accolades from Secretary of Education Richard Riley, who praised it as "a clear indication that our nation's public schools are cracking down on students who bring guns to school."[7]

Among the non-responsive states was Michigan, which submitted a cumulative total of 92 students expelled for firearm violations between January 1995 and June 1997.[8] The state did not disaggregate the cumulative data according to school year, school level, or weapon type as required by the department's questionnaire. Further analysis reveals that even this aggregate figure is misleading. The figure of 92 gun-related expulsions reported to the USDE was obtained from the FIA's *Weapons in Schools Final Report: January 1, 1995–March 31, 1997*.[9] In a memo attached to the report, the FIA director informs readers that "Although the Michigan Department of Education encourages all schools to report expulsions...to the Agency, it is believed many schools choose not to make the reports. For this reason, the number of reports are probably significantly lower than the actual number of offenses."[10] This conjecture is confirmed by the disaggregated figures, which reveal that only 180 of approximately 550 school districts, or 33 percent provided the FIA with data on expulsions.[11] This would suggest that the true number of expulsions in Michigan might be up to three times greater than the figure provided to the USDE, depending on the characteristics of the reporting and non-reporting districts. If the non-responsive districts expelled students at the same rate as the responsive districts, the total number of expulsions for all offenses—given as 521 between January 1995 and March 1997—would be closer to 1,500, and might actually exceed this. If one assumes that districts with a higher incidence of weapons violations might be disinclined to report a high number of expulsions to the state—as was the case in Detroit—the number would be much greater.[12] Indeed the data obtained in this study make this point clear: 582 expulsions were recorded in only 17 districts over a period of two years, 61 more than

the FIA recorded in 180 districts over a longer period of 26 months.

The lack of accurate reporting is a disturbing phenomenon not only because it prevents the public from understanding the magnitude of the problem, but also because it fails to provide district officials with the information they need to evaluate and react to the situation. Deborah Rudy of the USDE's Office for Safe and Drug-Free Schools, which conducted the study, claims that "[Michigan] gave us the data they had...The quality of data...is poor. You're obviously going to do much better if you have a system put in place."[13] When asked how the USDE would react if Michigan failed to furnish them with complete data once again Rudy explained "Our level of rigor and analysis will be much stronger for the '97–'98 school year. This will be the first time states have the facts they need to provide good data...we'll certainly be looking more closely."[14] But Rudy insisted the statutory threat to withhold federal funding to non-compliant states "is done hugely infrequently" and is unlikely to occur.[15]

Yet another federal office collects related data on school discipline. The USDE's Office for Civil Rights (OCR) conducts an annual compliance survey of 5,900 school districts across the country, or approximately 30 percent of all districts. The OCR is charged with guaranteeing equal access to education by prohibiting racial and gender discrimination under Title VI of the Civil Rights Act of 1964, and upholding the educational rights of persons with disabilities under Section 504 of the Rehabilitation Act of 1973. The compliance survey monitors special education programs, athletic programs, ability grouping, and student discipline. While earlier versions of the survey required districts to report expulsions, only suspension data have been collected since 1980.[16] However, the 1998 version of the questionnaire asks explicitly about expulsions, requiring districts to report the number of students expelled, disaggregated according to race and gender. Therefore, it is hoped that the results of this year's compliance review will yield more reliable and comprehensive data about expulsions. Peter McCabe, Coordinator of the OCR Survey, warns, however, that obtaining good data depends largely on the cooperation of local districts. While the compliance report is mandatory, many districts claim that they do not have the information.[17] Nevertheless, McCabe noted that the response rate is good, and improves when districts feel that they are providing data in the public interest, rather than being targeted by the federal government.[18] Whereas in the past non-responsive districts were not reprimanded, now the OCR plans to send follow-up letters and include possible site visits in order to ensure compliance.[19] However, the OCR does not threaten to terminate funding to districts even though it is entitled to do so. Such threats and actual termination of funds were common during the desegregation era, when approximately 1100 districts were terminated until they agreed to desegregate,[20] but the OCR is no longer wont to exercise its federal clout with such force. This is of particular concern to the Michigan Advisory Committee to the U.S. Commission on Civil Rights, which observed in 1996:

> ...in the last 4 years no review of a Michigan school district in the area of discipline has been conducted, while the OCR district office with responsibility for Michigan has conducted three such reviews in its local Ohio area...OCR survey data shows disproportionate discipline in the Michigan public school districts... The Advisory Committee recommends that OCR...select at least one school district in Michigan for compliance review of its disciplinary practices...[This] would elevate and bring attention to this issue.[21]

Since that time, one Michigan district has been reviewed. But as this study shows, discriminatory discipline policy is widespread, and additional compliance reviews would undoubtedly further the cause of educational equity. While termination of funds may seem an excessive punishment for failure to report, history shows that it is often the only way to ensure compliance. In this light, an audit of several districts certainly is a reasonable, if not too mild a recommendation.

But as McCabe correctly observed "the data source is the states,"[22] and it is they, not local districts, who were given an edict to report to the USDE. In spite of these numerous federal requirements, it appears that neither the State of Michigan nor its constituent districts possess the data collection mechanisms necessary to provide the federal government with the required data. In 1990 the state legislature enacted Public Act 207 which declared "In order to receive funds under this act, each district and intermediate district shall furnish to the department...the information requested by the department that is necessary for the preparation of a study of suspended or expelled pupils in grades K to 12."[23] This article was reauthorized a year later by Public Act 118, but later repealed in 1993 by Public Act 336.[24] Hence, the data collection requirement was never implemented. Since that time only limited data has been available at the state level. In addition to the aforementioned FIA data, a small survey project was undertaken by the Michigan Department of Education (MDE) analyzing expulsions in 35 districts during the

1995–1996 school year.[25] While this study does offer a glimpse into the expulsion law's effects, it is limited in scope and does not come close to providing the comprehensive statewide data required by the federal government survey. While state funding for the MDE has dropped precipitously in recent years, data collection remains vitally important to policymakers, parents, and student advocates. Moreover, such research would require only modest effort and minimal costs.[26] Seen in this light, the collection of accurate data on expulsions is an entirely reasonable expectation.[27]

Until the state develops such a data-collection mechanism it will remain extremely difficult for researchers and policymakers to understand the nature of the problem and respond appropriately to school violence. The State of Massachusetts offers a promising model. Massachusetts enacted a similarly harsh law prior to the implementation of the GFSA, but, in contrast to Michigan, that state has carefully monitored the effects of its legislation. Earlier this year, the State Department of Education released a comprehensive report entitled *Student Exclusions in Massachusetts Public Schools: 1996–97*, which included data spanning three school years, disaggregated according to race, gender, age, special education status, type of offense, and the number of students placed in alternative education following expulsion.[28] In Colorado, monitoring of expelled students revealed that eight percent got into trouble with the law within one year of expulsion, consequently costing the state millions of dollars more than it would have spent educating them.[29]

In order to evaluate the effectiveness or failure of the Michigan expulsion policy and its long-term social and fiscal implications it is imperative that this state collect data in a similar manner. Indeed, as the Advisory Committee to the U.S. Commission on Civil Rights observed "Without data there can be no analysis of the problem, no understanding, no corrective measures, and no improvement in the situation."[30] And the Committee further admonishes "It is an unacceptable excuse that schools do not possess or will not make such information available."[31] Unfortunately this remains the case in many districts across the state of Michigan. The high incidence of incomplete data reporting for this study bears testament to this fact.

NOTES

1. *Gun Free Schools Act, U.S. Code*, vol. 20, sec. 8921(d).
2. Michigan Advisory Committee to the U.S. Commission on Civil Rights, *Discipline in Michigan Public Schools and Government Enforcement of Equal Education Opportunity*, 2, 75.
3. U.S. Code, vol. 20, sec. 8921(b)(1) and (2).
4. Ibid., sec. 8921(e).
5. Department of Education, Office for Safe and Drug Free Schools, *Report on State Implementation of the Gun Free Schools Act School Year 1996–97*, (Washington D.C., 1998), 2.
6. Jessica Portner, "Officials Call Gun Report Proof of Crackdown," *Education Week*, 20 May 1998, 3.
7. Ibid.
8. Department of Education, Office for Safe and Drug Free Schools, *Report on State Implementation of the Gun Free Schools Act School Year 1996–97*, (Washington D.C., 1998) Table 1.
9. Family Independence Agency, *Weapons in Schools (Act No. 328, Public Act of 1994) Final Report of Referrals Received*, (Lansing, 25 July 1997), 1.
10. Ibid.
11. Ibid.
12. Detroit is an excellent example of this trend. The Detroit Public Schools expelled 232 students from August 1995 to June 1997 but did not report any of these expulsions to the FIA.
13. Deborah Rudy, interview by author, 23 July 1998, Washington D.C., tape recording.
14. Ibid.
15. Ibid.
16. Peter McCabe, interview by author, 22 July 1998, Washington D.C., tape recording.
17. Ibid.
18. Ibid.
19. Ibid.
20. Art Besner, "History of the Office for Civil Rights," (lecture delivered at the U.S. Department of Education: Washington D.C., 22 July 1998).
21. Michigan Advisory Committee to the U.S. Commission on Civil Rights, *Discipline in Michigan Public Schools and Government Enforcement of Equal Education Opportunity*, 76–77.
22. Peter McCabe, interview by author, 22 July 1998, Washington D.C., tape recording.
23. Michigan Public Acts, 1990, No. 207, sec. 388.1751.
24. Ibid., 1995, No. 336, §3.
25. Michigan Department of Education, *Report on Expulsions and Suspensions in Michigan for the 1995–1996 School Year*, by Lucien Parshall, (Lansing, 4 February 1997).
26. This entire research project (including labor costs) was conducted on a budget of less than $3,000, grant money included.
27. Kirk Profit as quoted in Michigan Advisory Committee to the U.S. Commission on Civil Rights, *Discipline in Michigan Public Schools and Government Enforcement of Equal Education Opportunity*, 49.
28. Commonwealth of Massachusetts Department of Education, *Student Exclusions in Massachusetts Public Schools: 1996–97*, (Malden, MA, 20 January 1998).
29. "Expelled Students May Cost Coloradans Millions, Study Says" *Education Week*, 24 January 1996, 4.
30. Michigan Advisory Committee to the U.S. Commission on Civil Rights, *Discipline in Michigan Public Schools and Government Enforcement of Equal Education Opportunity*, 75.
31. Ibid., 75.

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Analysis of Data

5

Of the districts surveyed, few provided all of the requested information. Often officials claimed such data did not exist, that it would cost hundreds of dollars to match files in order to obtain it, or that it was not public information. All of this despite the fact that they are required by law to report all of the requested information when reporting students to the FIA.[1] Hence the response rate of 64 percent is highly misleading, for only 17 districts provided useable data.[2] And even among these districts, many left gaping holes in the data they provided, particularly with regard to free lunch eligibility, which is the only available indicator of poverty among the student population. There are some available data, however, that suggest a strong correlation between poverty and school exclusions. The United States Commission on Civil Rights found a positive relationship between suspensions and poverty, implying that the suspension rate rises as the number of students in poverty rises.[3] This lends credence to the argument that students from lower socioeconomic strata are at greater risk of being excluded from school, and thus have less educational opportunity.[4]

In addition, certain districts did not provide specific information about disciplinary infractions, opting rather for vague responses such as "violation of [MCLA] 380.1311"[5] rather than specifying the offense. And even when specified, districts often reported "weapons infractions," a term that is specifically defined in statute as "firearm, dagger, dirk, stiletto, knife with a blade over 3 inches in length, pocket knife opened by a mechanical device, iron bar, or brass knuckles."[6] but has been stretched by local school districts to include paper clips, books, and cigarette lighters.[7] Furthermore, hardly any districts collected information on the fate of expelled students. The majority did not respond to the question about alternative education, and a considerable number failed to provide information on the reinstatement process, a procedure that is specifically outlined in the school code.

The data show that male students are expelled at a much higher rate (65 percent) than females (35 percent). Moreover, African-American students are being expelled from the public schools in disproportionate numbers. The problem of racially disproportionate discipline is not a new one. It has led to many legal battles across the nation, including *Black Students of North Fort Myers Jr.–Sr. High School v. Williams* and *Black Coalition v. Portland School District No. 1.*[8] This disturbing trend has been documented with regard to suspensions in numerous recent studies including the *OCR Compliance Report*, research at the University of Michigan Center for Law and Education,[9] the *Maryland Bar Journal*,[10] and in the *American Journal of Trial Advocacy*. The latter study found that nationwide 71.5 percent of students suspended are African-American, while only 28.5 percent are white. This indicates that African-Americans are being suspended at a rate 250 percent higher than their white counterparts.[11]

These findings are supported by data obtained in Michigan. The limited-scope study by the Michigan Department of Education (MDE) reveals African-Americans were expelled disproportionately at a level of 39.1 percent, nearly three times their share of the

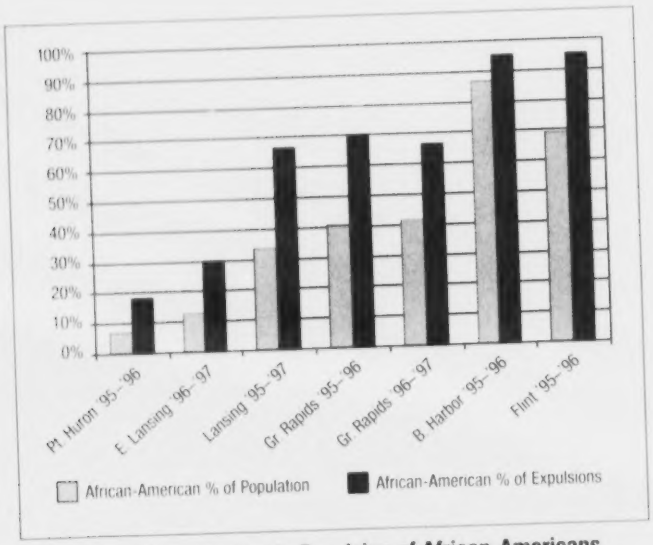

FIGURE 1. Disproportionate Expulsion of African-Americans, 1995–1997

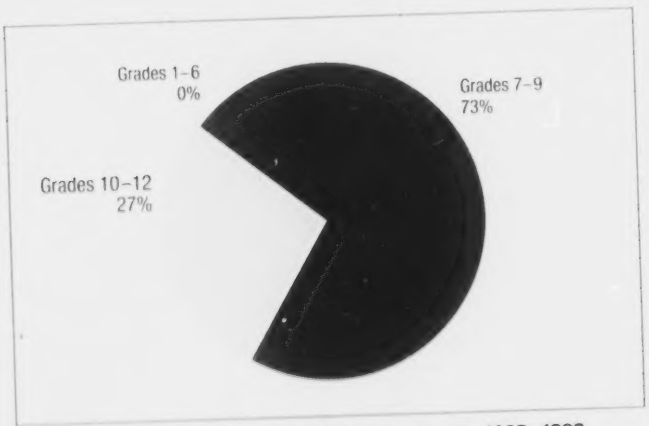

FIGURE 2. Benton Harbor: Expulsions by Grade, 1995–1996

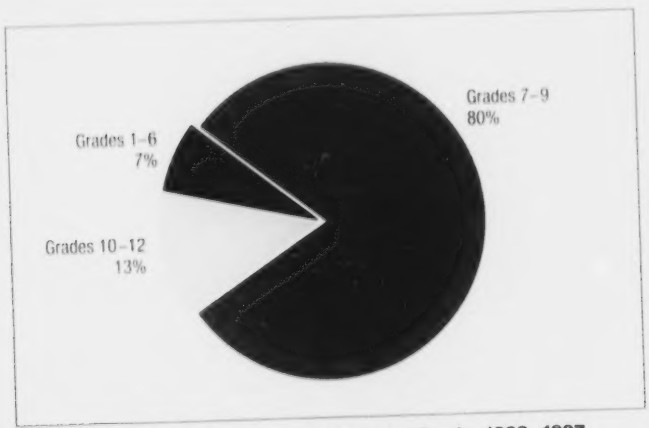

FIGURE 3. Benton Harbor: Expulsions by Grade, 1996–1997

state population.[12] In districts supplying acceptable data on race for this report, the average African-American population was 39.8 percent, yet African-American students accounted for 64 percent of the total expulsions. In the predominantly African-American district of Benton Harbor (87 percent) African-American students were still disproportionately expelled, making up 94 percent of the expulsions between 1995 and 1997.[13] This trend is visible in other parts of the state as well. For example, in Port Huron African-Americans are a mere 7 percent of the student body but made up 18 percent of the expelled population in 1995–1996.[14] In East Lansing, where the African-American population is 13 percent, 30 percent of the expelled students were African-American during the 1996–1997 school year.[15] In the Lansing City School District where African-Americans account for only 34 percent of the population, they were expelled at twice that level, making up 67 percent of all expulsions. In Grand Rapids, where the student body is 42 percent African-American, 70 percent of those expelled in 1995–1996 were African-American, dropping only slightly to 67 percent in 1996–1997.[16] And in Flint, where African-Americans make up 69 percent of the population they accounted for 96 percent of the expulsions during the 1995–1996 school year[17] (see Fig. 1).

Another significant figure emerging from Michigan expulsion data is the age of students expelled. While the stereotypical perpetrator of school violence is an 18-year-old "thug with a gun,"[18] data show that the majority of students caught by the expulsion law are in fact between the ages of 12 and 15. In Benton Harbor 72.7 percent of the students expelled during the 1995–1996 school year were between the ages of 11–16, and the next year 80 percent fell into this age bracket[19] (see Figs. 2 and 3).

In Muskegon 22 percent of those expelled were elementary students, and 61 percent were 7th–9th graders, while only 17 percent were in tenth grade or above, indicating that the majority of students being expelled are under the age of 16, the legal dropout age in Michigan[20] (see Fig. 4). Some of these students never return to school following expulsion and are not provided with alternative education. Hence we have created a situation that is tantamount to legally sanctioned truancy, whereby students not afforded the right to leave school are forcibly barred from attending, and are left with no educational opportunity whatsoever. Similar data in other districts confirm the prevalence of this trend: in Bay City 14 of 22, or 63 percent of the students expelled during the 1995–1996 school year were under the age of 16. The following year 9 of the 13 students expelled fell into this category[21] (see Fig. 5).

The majority of students expelled in Michigan were found guilty of bringing knives to school. Despite assertions to the contrary in *Education Week*, it is clear that knives, not guns, account for the majority of weapons offenses in Michigan.[22] During the 1995–1996 school year 68 percent of the students expelled in Benton Harbor were expelled for bringing knives to school.[23] Likewise, during the same year in Flint, 68 percent of expulsions were for knife possession, and the next year 67 percent of all expulsions were knife-related.[24] Similarly in the Lansing school district, 49 percent of all expulsions between 1995–1997 were for knife possession.[25] Expulsions were also recorded for firearm possession and drug-related offenses, but at a far lower rate. Expulsions related to criminal sexual conduct (CSC) and arson were extremely rare (see Fig. 6). Also of note is the number of districts which did not specify the type of weapon involved or the offense, opting rather for vague definitions such as "disobedience," "gross misconduct," or "violation of [MCLA] 380.1311." These incomplete responses raise serious questions about the broad powers to expel that are granted to districts.

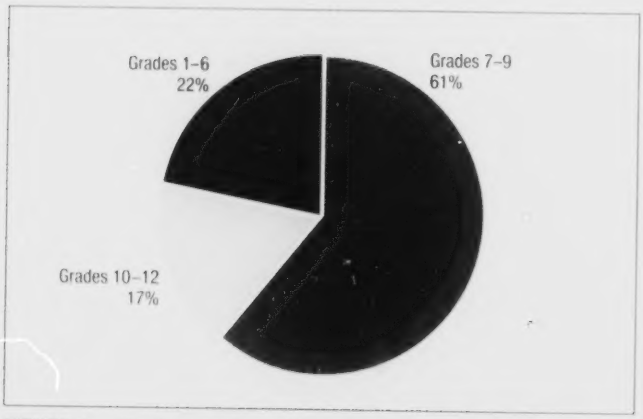

FIGURE 4. Muskegon: Expulsions by Grade, 1995–1997

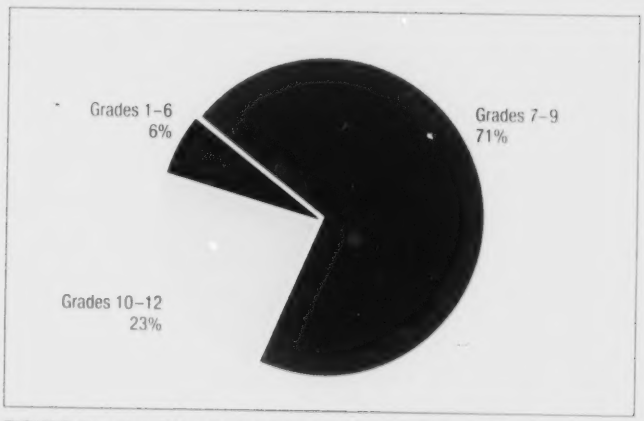

FIGURE 5. Bay City: Expulsions by Grade, 1995–1997

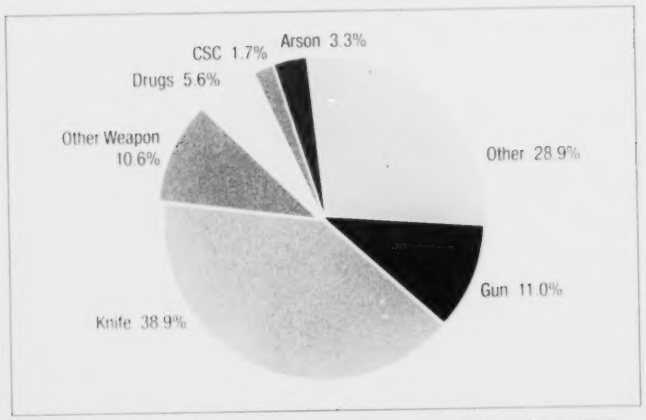

FIGURE 6. State of Michigan: Reason for Expulsion, 1995–1997

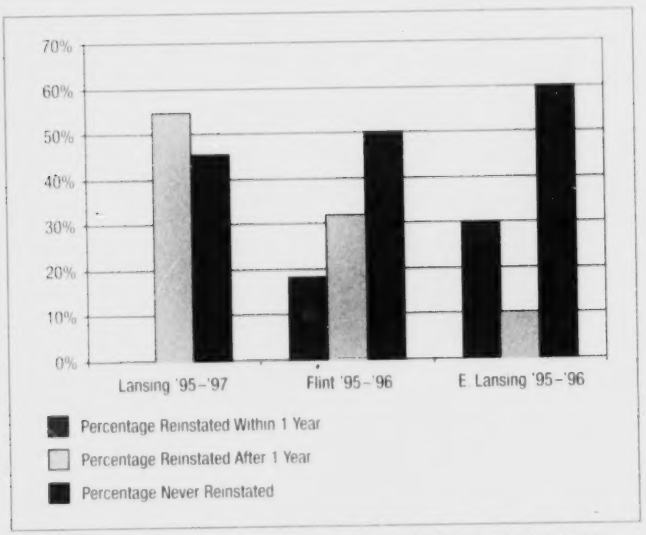

FIGURE 7. Reinstatement of Students Petitioning, 1995–1997

Perhaps the most disturbing trend is the sheer number of expelled students who do not receive an education after being excluded from school. And where services are available, there is no assessment of the quality of education provided. While most of the 17 responsive districts complied with state law and referred expelled students to the FIA or Community Mental Health, their record is much poorer when it comes to reinstatement rates and provision of alternative education. Most districts chose not to provide data or claimed they did not have any such records. The paucity of information on this vitally important stage of the expulsion process is extremely disturbing. Without such data it impossible to assess the effects of the law, because the state has quite simply lost track of expelled children. Moreover, it is impossible to know what has happened to these students. Are they at home, in alternative schools, or on the street? Until the state begins to take data collection seriously Michigan citizens and law enforcement officers will be left in the dark with regard to these important questions, and expelled students will remain effectively invisible.

The only significant data on reinstatement came from the urban districts of East Lansing, Lansing, and Flint. In East Lansing only 40 percent of those expelled actually petitioned for reinstatement, in Flint 50 percent petitioned, and in Lansing the figure was slightly higher at 64 percent.[26] These figures can be attributed, in part, to the state policy which does not provide parents with any assistance in preparing petitions.[27] This has created an added difficulty in the readmission process for families unfamiliar with legalistic paperwork as well as those who lack the resources to seek legal assistance.[28] Of those petitioning for reinstatement in East Lansing, 30 percent were reinstated in less than one year, 10 percent were reinstated after one year and 60 percent were never reinstated.[29] In Flint, during the 1995–1996 school year, 18 percent were reinstated in less than one year, 32 percent were reinstated after one year, and 50 percent were never reinstated.[30] In Lansing, no students were reinstated until after one year. At this point 54 percent were reinstated, while the remaining 46 percent were never readmitted to their schools[31] (see Fig. 7).

The record of these districts is even more dismal when it comes to alternative education. East Lansing and Lansing did not provide any information whatsoever about alternative placement. Flint indicated that 46 percent of its expelled students were provided with alternative education in 1995–1996.[52] It is not known, however, whether these data sets overlap. Thus it is impossible to determine, for instance, whether some of those students reinstated were provided with alternative education while out of school. Unfortunately several studies corroborate these disquieting figures. University of Baltimore law professor Donald Stone's study published in *The American Journal of Trial Advocacy* found that 52 percent of school districts provide alternative education programs to suspended students, but does not specify the figure for expelled students.[53] Stone further examined these data to determine whether discrepancies existed between urban, suburban and rural districts. He found that alternative education is provided in only 44 percent of rural districts, 47 percent of urban districts, and 71 percent of suburban districts.[54] This finding suggests that the ability to offer alternative education in the absence of a legislative mandate is directly dependent upon the funding level of the district in question, hence the higher rate of alternative education programs in the richer suburban districts. A more sobering, and likely more reliable, figure on alternative education in Michigan is found in the Michigan Department of Education's (MDE) study of 35 districts. In these districts the MDE found that only 8.7 percent of expelled students received alternative education![55] (See Fig. 8).

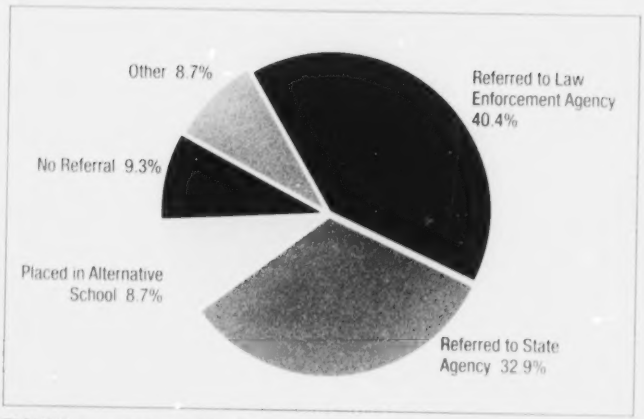
Other 8.7%
Referred to Law Enforcement Agency 40.4%
No Referral 9.3%
Placed in Alternative School 8.7%
Referred to State Agency 32.9%

FIGURE 8. State of Michigan: Follow-up After Expulsion, 1995–1996

Source: Michigan Department of Education, *Report on Expulsions and Suspensions in Michigan for the 1995–1996 School Year*, by Lucien Panshall. (Lansing, 4 February, 1997)

NOTES

1. See *Michigan Compiled Laws, Annotated* sec. 380.1311(4), and correspondence between author and Muskegon Public Schools, Student Advocacy Center Files, July 1998.

2. These districts were: Benton Harbor, Big Rapids, Cadillac, East Lansing, Flint, Lansing, Port Huron, Traverse City, West Branch, Grand Rapids, Detroit, Pinconning, Alpena, Battle Creek, Bay City, Southfield, and Muskegon.

3. Michigan Advisory Committee to the U.S. Commission on Civil Rights, *Discipline in Michigan Public Schools and Government Enforcement of Equal Education Opportunity*, 13.

4. Ibid., 13.

5. See correspondence between author and Battle Creek Public Schools, Student Advocacy Center Files, July 1998.

6. *Michigan Compiled Laws, Annotated* sec. 380.1313.

7. Jason Karas, "Muskegon Schools Expels [*sic*] 7 Students," *Muskegon Chronicle*, 17 June 1998, 1(A) et seq.

8. 470 F.2d 957 (1972) and 484 F. 2d 1040 (1973), respectively.

9. Michigan Advisory Committee to the U.S. Commission on Civil Rights, *Discipline in Michigan Public Schools and Government Enforcement of Equal Education Opportunity*, 8–11.

10. Claudette McDonald Brown and Kathleen A. Birrane, "What's Happening to Our Children," *Maryland Bar Journal 27*, no. 3 (1994): 36.

11. Donald H. Stone, "Crime & Punishment in Public Schools: An Empirical Study of Disciplinary Proceedings," *American Journal of Trial Advocacy 17* (1993): 351, 366.

12. Michigan Department of Education, *Report on Expulsions and Suspensions in Michigan for the 1995-1996 School Year*, by Lucien Parshall, (Lansing, 4 February 1997).

13. Michigan Expulsion Data 1995–1997, Student Advocacy Center of Michigan, Ann Arbor.

14. Ibid.

15. Ibid.

16. Ibid.

17. Ibid.

18. Dan Morain, "Wilson Signs School Safety, Testing Bills," *Los Angeles Times*, 17 October 1995, 1.

19. Ibid.

20. See *Michigan Compiled Laws, Annotated* sec. 380.1561.

21. Michigan Expulsion Data 1995–1997, Student Advocacy Center of Michigan, Ann Arbor.

22. See section 4, note 5 (page 9 of this report).

23. Michigan Expulsion Data 1995–1997, Student Advocacy Center of Michigan, Ann Arbor.

24. Ibid.

25. Ibid.

26. Ibid.

27. *Michigan Compiled Laws, Annotated* sec. 380.1311(5)(c).

28. See section 6, note 10 (page 22 of this report).

29. Michigan Expulsion Data 1995–1997, Student Advocacy Center of Michigan, Ann Arbor.

30. Ibid.

31. Ibid.

32. Ibid.

33. Stone, "Crime & Punishment in Public Schools: An Empirical Study of Disciplinary Proceedings," 371.

34. Ibid.

35. Michigan Department of Education, *Report on Expulsions and Suspensions in Michigan for the 1995-1996 School Year*, by Lucien Parshall, (Lansing, 4 February 1997).

6

Access Denied: Personal Narratives

The following stories are based on interviews conducted by the author with students and their families, and case files in the Student Advocacy Center archives. Names of students, school officials, and district affiliations have been altered to protect confidentiality. Interviews were conducted face-to-face with several students and their parents in different Southeastern Michigan school districts. The interviews covered students' discipline history, recounting of the expulsion process, impact of the expulsion on personal and family life, effects of the expulsion on educational aspirations and opportunities, as well as obstacles to reinstatement or alternative education. The regional specificity of the interview pool is due primarily to informal network connections between members of the Student Advocacy Center staff and the interviewees, which facilitated easier access to these students and their families. They cover both special education and regular education situations, different age groups, different races, different offenses, and different outcomes. In this regard the following stories provide a representative sample of the various expulsion experiences of Michigan students. However, all of these cases involved male students. This is due primarily to the disproportionate number of male students expelled in the area. It should also be noted that these cases are extremely rare in that they involve lawyers and/or student advocates. The majority of expelled students and their families are left to fend for themselves while navigating through the perilous procedures of the expulsion process.

MARTIN

Martin is an 18-year-old African-American student who was expelled from a school district in County A for possession of a 3-inch pocketknife in November of 1996. Martin was not a special education student, and therefore was not eligible for alternative education under IDEA or Section 504, a law prohibiting discrimination against disabled persons in any federally funded program, including the public schools.[1] Martin had been referred to the principal on several occasions for trivial violations of the no-coat rule, no-eating rule, and for remarks made to teachers. However, he had never engaged in any dangerous behavior or been severely disciplined by the school. On October 31, 1996 while in his auto repair class at a district-affiliated technical college, Martin was found picking his nails with a small knife. When his teacher inquired about the knife, Martin immediately handed it over to him. In a written statement to the board of education he explained that "I was sitting in the class room alone going through my pocket when I pulled out my jersey...the knife fell out and then I started scratching some black stuff that looked like tar or something off my fingers because it would not come off with soap and water."[2] The statements of two student witnesses who were passing in the hallway corroborated this statement. One wrote "I saw Martin with the knife sitting in the corner scratching his hand and cleaning underneath his nails, but he wasn't using it in any threatening way towards anyone."[3]

In his summary report to the school board a district administrator wrote "[The teacher] asked for the knife, Martin cooperatively gave the knife to him."[4] Nevertheless the school contacted the police regarding the incident. Due to the circumstances, the investigating officer opted to close the investigation after he concluded, "...the incident should be handled as a school discipline incident...There is not criminal intent shown."[5] Despite the principal's acknowledgement in a letter to the superintendent that Martin had done very well in his auto repair class, had excellent attendance, an above average grade, and is a "cooperative, positive young man"[6] the principal nevertheless recommended expulsion. He goes on to say "Expulsion is mandatory unless the student can demonstrate one of the exceptions outlined in the law...I believe Martin did not knowingly bring the knife to school, but when he discovered that he had it, he should have turned it in to the teacher."[7] The exceptions referred to by the principal state "...a school board is not required to expel a pupil for possessing a weapon if...The object or instrument possessed by the pupil was not possessed by the pupil for use as a weapon...[or the] weapon was not knowingly possessed by the pupil."[8] Yet in spite of this crystal-clear statutory exception, Martin's clean record, and the fact that he willingly gave the knife to the teacher, the board of education voted to expel him. With the help of the Student Advocacy Center Martin was able to enroll in classes at a local community college. He was recently readmitted to his old school, but the district has not agreed to allow the community college credits to be used as high school credit, contrary to an agreement made at the reinstatement hearing. Consequently, Martin's graduation has been held up.[9] The school district that expelled Martin did not respond to the Freedom of Information request for data.

GREG

Greg, a white 14-year-old freshman, was expelled from an alternative public high school in a school district in County A in October 1997 after being caught with a knife. I interviewed him and his parents in the living room of their townhouse approximately eight months after his expulsion. According to his account, Greg and two of his friends were "messing around" with a knife in the stairwell between classes. Greg's friend gave him a knife, which he put in his pocket. The knife later fell to the floor while he was in English class. The incident was reported to the assistant principal, who then called the police. The assistant principal recommended expulsion, and a hearing before the board was arranged.

According to Greg, his high school "wanted him out" and was opposed to his placement anywhere in the district.[10] At this point Greg's parents contacted the Executive Director of the Student Advocacy Center, after being advised to do so by a friend at church who works in conjunction with the Center. His mother claims "it just happened that I knew some-

body who knew somebody,"[11] otherwise they may have been forced to endure the expulsion proceedings without expert advice. Greg was immediately scheduled for a psychological evaluation in order to determine whether he was eligible for special education, thereby delaying indefinitely the expulsion hearing before the Board of Education. According to his mother, the special education evaluation should have been scheduled earlier because information gleaned from that evaluation would have probably helped Greg receive necessary educational support in school. Nevertheless, it proved to be their family's "saving grace."[12] After nearly three weeks of evaluations, consultations and pressure by the Student Advocacy Center to get Greg placed in a quality local program, he was placed in an alternative program for students who have had difficulty in the regular high schools. The school is almost entirely African-American.

Greg does not like the school because he has difficulty making friends in what he perceives to be a hostile environment, although the principal has been very accommodating. He described the school as very segregated and sometimes not challenging enough. Nevertheless, he has made an agreement with his parents to pass all of his classes there before applying for reinstatement at one of the district's larger comprehensive high schools. He is considering reapplying to his old school because he would like to participate in its exceptional music program, but says that he does not know if the school wants him back.

Greg's mother was happy to talk about what happened to her son and described the interview experience as therapeutic. However she acknowledged that the event "wreaked havoc in our lives."[13] Greg's father is extremely upset about his son's expulsion. He argued that "Greg should not have been expelled because he was just playin' around. He meant no one any harm and he didn't harm anybody...I don't think [the law] should have been applied 'cause it says in the rule it has to be intended for use as a weapon and Greg wasn't doing that."[14] Greg's mother also discussed her opinion of Michigan's expulsion law:

> I think the intention of the law is good. However I don't think it's enforced in a way that's meaningful... Certainly Greg made a stupid decision to have a knife on campus, he knows that...But there's no malicious intent.... You hate to make it all 'if this happens then this...' but it needs some looking at, and something needs to be done because too many people are losing their education and that's not the intent. Or I'd hope that not the intent, to take away someone's education...We couldn't afford to send Greg to private school. What do you do?[15]

Fortunately for Greg he was able to continue his education, albeit in an environment where he sometimes felt uncomfortable. For many other students this was not the case, because they did not qualify for special education programs. Although this district has provided discipline-related data on prior occasions, it has not yet furnished any of the information requested for the purposes of this study.

SHAWN

I met with Shawn and his *pro bono* lawyer at his family's apartment in a school district in County B. His mother was at work when the interview was conducted. In December 1996 when he was 16, Shawn and three other African-American students were suspended from school for 10 days after they allegedly touched a 14-year-old girl inappropriately in the boys locker room after school hours. The girl refused to provide the principal with any written statement or make any formal accusation, and the only evidence of the boys' misconduct came from a hall monitor who caught the girl coming out of the boys' locker room.

Shawn maintains that the touching was fully consensual, and that the girl entered the locker room voluntarily. The school never informed his mother of the suspension and she therefore urged him to return to school. He returned to school three times, was told to leave on each occasion, and the school finally contacted his mother. On the ninth day of the suspension an expulsion hearing was held before the school board. Shawn and his friends never disputed the ten-day suspension but felt that the girl, who was also breaking school rules, should have received the same punishment. When he discovered that the locker room incident might result in expulsion, Shawn immediately tried to resolve the matter with the girl. He explained in his soft-spoken manner "At first I didn't know what was going on so I thought I'd go get the girl and talk to her. So I saw her walking in the hall

and we went to the principal together...She said 'nothing happened, I went in there by myself.' The principal said 'I'll take that into consideration' then she went back to class and I went back to class."[16] But the principal paid her statement no heed.

The expulsion hearing took place in December 1996 during the school's final exam period, from which the four boys were excluded. The school's case took 30 minutes to present and rested entirely on the story of the hall monitor who was never inside the locker room. School officials asserted that the 14-year-old girl was too young to consent to touching and therefore the boys had committed statutory rape. Shawn's attorney corrected this legal error, proving that she could consent to touching under state law. The school board's attorney agreed. The charge was then changed to "sexual harassment" under district policy, and the board voted 4–2 to expel the students, despite the attorney's argument that they had not performed a thorough investigation and lacked any credible evidence, specifically a statement from the alleged victim.

At school many students boycotted Martin Luther King day festivities to protest the decision which they felt was excessive. Race was also an issue. A female student at the school complained "The way they treat black students, I don't think it's right and I don't think it's fair."[17] Concerned parents brought up a similar case in which two white students were caught having sex in a car while on school property, and were only suspended for two days.[18]

Shawn's attorney appealed the expulsion on the grounds of poor evidence. After ten minutes of review, the Circuit Court judge determined that the district had not abused its discretion. While Shawn's attorney was planning a second appeal to the appellate court, the superintendent of the district turned Shawn's case over to the police. The prosecutor threatened to authorize charges of first degree CSC unless the boys waived their right of appeal and plea-bargained for a lesser charge. Faced with a trial and potential prison sentence, the boys decided to accept the plea bargain. They were given probation, community service, and one served seven days in jail.

Shawn had a difficult time finding alternative education because unlike the other three boys, who were nearly 17, he was not eligible to enroll in a local community college. The expulsion cost him his entire junior year because the district refused to let him take his first semester exams, and he was out of school second semester. But after he was denied admission to local private schools and charter schools, he signed up for correspondence courses which helped him earn one semester of credit, although they were not free. He then applied to be reinstated in June of the following year. By this time the superintendent had been fired for misconduct, the board president had been voted out of office, and one incumbent board member had declined to run again. Hence, the climate had changed dramatically and the boys were reinstated. Looking back on his expulsion Shawn describes the impact it had on him and his family:

> I got expelled and I looked down the road and I didn't see if I had a future... I was scared too. I wasn't functioning normal. I'd wake up, cry, sit around the house. I was depressed and I wouldn't talk to anybody. Then I got sick with the chicken pox.. And it was stressful for my mom because she had to deal with this and go to work and take care of my little brother. She'd go to work and do nothing but work on the case, calling people. She didn't know what to do, what to think, what to say. She didn't know where to turn...All she could do was call our lawyer.[19]

Since being reinstated Shawn has successfully completed his senior year and will be attending Central Michigan University on a football scholarship in the fall. But his attorney warns that this ending is not typical of expulsion cases...

> These guys are very lucky. These are guys who were thinking about college anyway before this whole episode, and now that we were able to get them back in they'll get their fair shot. But it's been a long, hard, unnecessarily drawn out battle. It should have never got out of hand the way it did... If they didn't have the support behind them this never would have happened. The public was aware of this and a lot of people were sympathetic. But that's atypical...For most students in these situations they show up-perhaps with their parents-they don't know what's going on, and it's all over in thirty minutes. And these kids are criminally expelled and many of them never get back into school again.[20]

Shawn's school district did provide most of the data requested for this study, with the exception of information about alternative school placements.

KEVIN

Kevin is a soft-spoken 15-year-old white student from a school district in County C. I met him and his mother in a small park where his mother works as a playground supervisor. She participated in the interview as well. Kevin was permanently expelled from the public schools in this almost exclusively white working-class community after he was allegedly caught selling LSD at school, an offense punishable by expulsion under the locally adopted school discipline policy. Another student told the physical education teacher that Kevin was selling drugs, and the teacher informed the principal. The school officials did not find any contraband on him, only a small amount of money which they claimed he obtained from selling LSD to other students. Kevin was subsequently expelled permanently from the district and all other Michigan school districts under Section 1311 of the school code.

His mother did not realize that expulsion meant permanent exclusion from public schools. She had assumed that it meant one year at most. But Kevin remains out of school today, 16 months after he was expelled, and he has not been furnished with any alternative education whatsoever. The district's director of secondary education told the family that Kevin could "earn his way back." Therefore he was enrolled in a Catholic Social Services drug rehabilitation program despite the fact that he tested negative and maintains he has never used drugs, a claim confirmed by his mother. He and his mother also attended counseling. The following fall, his mother contacted the director about possible reinstatement. He instructed her to collect letters of recommendation from non-related acquaintances that could be submitted to the board. He did not provide them with a petition for reinstatement or any information about the procedure. Meetings were constantly scheduled and delayed for the next six months prompting his mother to give up. She recounts her continuing frustration:

> I had pretty much given up [in Spring 1998]... at the time I was devastated...I thought if I got all of these people to write letters of recommendation and if Kevin went to these drug classes then it would be OK. Right now Kevin is given too much freedom and that's not actually his fault...he's worked when he could work, and I can't afford home schooling...I'm at poverty level. But my finances are none of their business I shouldn't have to tell them those things. I don't want sympathy. I just want my kid to get a fair break here. His dad and I went before the director... I thought we had done enough. I feel that in the year he's been out of school he's been punished enough. Right now at this point I don't think he should have to do anything else. I am so disenfranchised with those people. I told them when I went before them the first time that I didn't blame them for their policy because drugs are a scary thing and somebody could've gotten killed. If this was a solution to solve the drug problem then it would be different but its not. I resent them and I'm hurt by them, and it makes me angry...they're hurtin' my kid. It's like they don't think he's worth anything...[21]

Meanwhile Kevin has worked hard since his expulsion and has constantly told school officials that he would like to return to school. He has had several different jobs in the year and four months since he was expelled including babysitting the neighbor's five-year old daughter, working at a party store, completing side jobs for his dad, and blacktopping driveways. He says that he would prefer to attend the district's alternative school program because friends say that it is better than the regular high school. When asked how he feels about being expelled he replied hesitantly:

> ...*I hate it*...I could care less about [this school district]...all they've been doing ever since I got kicked out is jerkin' me around. They said they were gonna set up meetings and I haven't been to one yet. They don't really care that I care. I want to go back to school and I've been sayin' that since I got kicked out, but that don't seem to matter to them...That's what they make me feel like."[22]

Recently, the school district has established an alternative program through which students like Kevin can "earn their way back." The district will not allow him to attend the district-wide alternative program until he spends six months in this school for expelled students. But even this will not guarantee Kevin admission because there are limited slots available. According to Kevin, "they keep everybody dangling."[23] The district claims he must attend the program for expelled students because the districtwide alternative school is only for students over 16, and he is 15. He worries that if he waits until next school year to enroll in this program he will have been out of school for almost three years, an experience that one of his friends suffered through. His mother is also worried about the expelled students program because it runs from 3–9 p.m., a schedule that would cause transportation difficulties, as the school district doesn't provide transportation for alternative programs.

Ruth Zweifler, Executive Director of the Student Advocacy Center, believes that Kevin ought to be reinstated in the school of his choice and should not be required to attend a school for expelled students

when he has already been out of school in excess of the required 180 days. She has since helped Kevin's mother secure *pro bono* legal assistance from a prominent Detroit law firm. According to Kevin's mother, Zweifler has been the only advocate for Kevin, and no one else has shown any concern. She noted that since getting a lawyer the director has been much more responsive and even returns her phone calls, but only when she mentions her lawyer's name. While the director apparently expressed his concern about Kevin's situation to the attorney, he did not follow up on oral agreements he made with her. The only suggestions he has offered the family are home schooling and correspondence courses, for which the family does not possess the necessary resources. At present, Kevin is still out of school but his attorney has now threatened to take the district to court if Kevin is not reinstated into an acceptable educational program. Kevin's mother reflected:

> I know what it's like to live in futile situations, so I can relate to Kevin...I've already had one son who didn't graduate from high school and I don't want to see that happen to my kids...I'm still devastated in a lot of ways...This has cost me my health because my blood pressure is sky high from worrying about this...I don't believe 14 year olds should be given a life sentence of no education...it doesn't make sense to me.[24]

Kevin's mother claims that many students have been expelled for similar offenses, and none have received legal help or alternative education. The school district that expelled Kevin did not provide any data for this study.

NOTES

1. See *U.S. Code*, vol. 20, sec. 1400 et seq., and 34 CFR, sec. 104.35.
2. *Board Packet, Expulsion Hearing for* _____, Student Advocacy Center Files, Ann Arbor.
3. Ibid.
4. Ibid.
5. Ibid.
6. Ibid.
7. Ibid.
8. *Michigan Compiled Laws, Annotated* sec. 380.1311(2)(a) and (b).
9. Ken Ludwig, interview by author, 31 August 1998.
10. Interview by author, 25 June 1998, tape recording.
11. Ibid.
12. Ibid.
13. Ibid.
14. Ibid.
15. Ibid.
16. Interview by author, 9 July 1998, tape recording.
17. Mark Mayes, "Protesters Call Expulsions Biased," *Lansing State Journal*, 21 January 1997, 1(B).
18. Interview by author, 9 July 1998, tape recording.
19. Ibid.
20. Ibid.
21. Interview by author, 6 July 1998, tape recording.
22. Ibid.
23. Ibid.
24. Ibid.

Due Process: Protecting the Constitutional Rights of Students

7

The Fourteenth Amendment...protects the citizen against the State itself and all of its creatures—Boards of Education not excepted.

West Virginia Board of Education v. Barnette, 319 U.S. 624, 637(1943)

...the State is constrained to recognize a student's legitimate entitlement to a public education as a property interest which is protected by the Due Process Clause and which may not be taken away for misconduct without adherence to the minimum procedures required by that Clause.

Goss v. Lopez, 419 U.S. 565, 574 (1974)

The Fourteenth Amendment to the United States Constitution states that the government may not "deprive any person of life, liberty, or property without due process of law."[1] The United States Supreme Court has since interpreted the due process clause as applicable to students in the public school system. Although many critics frown at the limitation of school authority,[2] the constitutional rights of schoolchildren have consistently been upheld. Numerous other decisions, namely *Tinker v. Des Moines School District* in which the court ruled that students do not "shed their constitutional rights...at the schoolhouse gate"[3] have defined children as persons under the constitution.

Yet expulsion laws in Michigan and across the country, fail to adhere to the minimal due process requirements mandated by *Goss v. Lopez*, thereby denying students their constitutional rights.[4] While due process rights guaranteed by *Goss* are minimal,[5] it is instructive to note that the *Goss* decision, which concerned ten-day suspensions, differentiated between suspension and expulsion. The court warned that "Longer suspensions or expulsions for the remainder of the school term, or permanently, may require more formal procedures."[6]

Certain states have enshrined the *Goss* decision in statute by outlining such formal procedures. The State of California devotes upwards of four pages to outlining due process procedures. The statute requires: written notice of expulsion and hearing data, the possibility of a hearing officer, transcripts of the hearing, and the testimony of complaining witnesses. In addition, any decision to expel "shall be based upon substantial evidence relevant to the charges adduced at the expulsion hearing...no evidence to expel shall be based solely upon hearsay evidence."[7] The State of Indiana's Code also provides for highly structured expulsion hearings overseen by a hearing examiner who is not involved in the case, thus ensuring due process for students. Most notable are requirements to allow cross-examination of complaining witnesses, and examination of their statements and affidavits.[8] Likewise, the state of Nebraska outlines extensive due process procedures allowing students to cross examine, and requires the district to record the proceedings at their expense.[9] These procedures are excellent examples of the due process protections envisioned by the Supreme Court in *Goss v. Lopez*.[10]

The current Michigan law contains no explicit references to due process whatsoever, except in the case of special education students.[11] There is no similar protection guaranteeing that regular education students will not be deprived of due process rights. The section mandating expulsion describes offenses warranting expulsion, and states that "...the school board,...shall expel the pupil from the school district permanently."[12] This legislation does mention exceptions to the rule, but does not outline specifically how culpability will be determined. The current bills in the Michigan legislature* propose only

*See note, page 25.

minor additions. The Republican sponsored Senate version would add a section requiring district boards of education to use locally adopted due process policies in expulsion proceedings, and require the Michigan Department of Education (MDE) to distribute a model due process policy.[13] But as Wendy Wagenheim, Legislative Affairs Director of the American Civil Liberties Union of Michigan, observes the State Board of Education adopted suggested due process procedures in 1982, yet students continue to be deprived of their constitutional rights. In her testimony to the House Education Subcommittee on School Violence Wagenheim argued that

> In light of the fact that students are currently being treated very differently depending upon their local school district, it is unclear as to how many local districts are even aware of the State Board of Education's suggested procedures. This is, of course, the danger in only providing a model for due process rather than statutorily requiring due process standards by legislation."[14]

The Democratic sponsored house version of Senate Bill 313 would require "an expulsion hearing concerning the pupil, affording the required Due process protections under section 1310."[15] Section 1310, outlined in House Bill 5482, simply requires school districts to develop due process policies by July 1, 1999.[16] Such a policy would still risk creating disparate treatment, as Wagenheim warns. Moreover the current language regarding due process does not outline a detailed hearing procedure and decision making as is the case in California, Nebraska, and Indiana. According to Wagenheim, this is counterproductive: "...the purpose of a hearing is...a chance for all sides to be heard, an opportunity to understand why a situation occurred and to determine the best course of action for all involved."[17] Instead the bill assumes that expulsion is the only possible outcome.

According to Brent Simmons, Professor of Constitutional Law at Thomas M. Cooley Law School, "...the text suggests that due process is some meaningless, *pro forma* obstacle to the Bill's requirement of mandatory expulsion...What's the point of a hearing if we've already decided the outcome?"[18] Simmons' argument is well supported by Supreme Court rulings. In 1961 the court ruled "[t]he very nature of due process negates any concept of inflexible procedures universally applicable to every imaginable situation."[19] The MDE's suggested guidelines take this position as well,[20] stating "perhaps the most important characteristic of procedural due process is its variable nature...the very nature of due process rejects...a rigid approach."[21]

Certain analysts of the Michigan law have commended the legislation for its due process protections, observing that:

> ...the school board would have to first make a finding and a determination that the student was in possession of a dangerous weapon...Upon such a finding the student is expelled from the district unless he can establish in a clear and convincing manner that the instrument in his possession was not possessed for use as a weapon, was not knowingly possessed, or was possessed with permission of school or police authorities.[22]

While this analysis of the law seems eminently reasonable it remains so only in the realm of theory. In practice, the exception clauses of 1311 are often not enforced, and local districts frequently fail to adhere to them. As Martin's story makes clear, these procedures are not always followed. In that case, the principal recommending expulsion openly acknowledged that the weapon was not knowingly possessed, satisfying the aforementioned exception, yet Martin was expelled by the school board in spite of this finding. Similarly, local districts have also ignored the well-delineated reinstatement procedure. As Kevin's case illustrates many school districts are not affording students their opportunity to be reinstated. Kevin satisfied the state reinstatement guidelines of not endangering fellow students, exhibiting maturity, expressing remorse, and involving his parents in the case,[23] yet the school board consistently delayed scheduled meetings and failed to grant him a proper hearing. Instead, the administration advised him to take correspondence courses or apply to a limited enrollment "earn your way back" school, despite the fact that he had already done so and was eligible for unconditional reinstatement.[24] Also disturbing are the MDE's findings on special education students, who are explicitly guaranteed due process rights under Section 1311.[25] Yet of all the special education students expelled during the 1995–1996 school year only 19.6 percent received continued educational services, only 26.1 percent were given individualized education programs, and a mere 10.9 percent were given due process hearings.[26]

These cases demonstrate that there is a growing gulf between the statutory right to due process and its actual enforcement in expulsion cases. Hence the question becomes how do we protect the constitutional rights of students without infringing upon the authority of local school districts? This conflict between centralized authority and local government is as old as our constitution. And in order to resolve it, a compromise which will safeguard constitutional rights while ensuring local control must be found.

NOTES

1. U.S. Constitution, amend. 14, sec. 1.

2. Anne Proffitt Dupre, "Should Students Have Constitutional Rights: Keeping Order in the Public Schools," *George Washington Law Review* 65, no. 1 (1996): 49–105.

3. 393 US 503, 506 (1969).

4. 419 US 565 (1975).

5. Mary A. Jensen and Stacie G. Goffin eds., *Visions of Entitlement: The Care and Education of America's Children*, (Albany: SUNY Press, 1993), 50.

6. *Goss v. Lopez*, 419 US 565, 584.

7. *Annotated California Education Code*, secs. 48918, 48918.5, (West, 1998).

8. *Burns Indiana Statutes Annotated*, secs. 20-8.1-5-9 and 20-8.1-5-10, (Michie, 1998).

9. *Revised Statutes of Nebraska*, secs. 79-270 through 79-288, (1996, 1997).

10. 419 US 565.

11. *Michigan Compiled Laws, Annotated* sec. 380.1311(8).

12. *Michigan Compiled Laws, Annotated* sec. 380.1311(2).

13. Michigan, *Senate Bill 313*, sec. 380.1311(7), as passed by Senate 4 June 1998.

14. Wendy Wagenheim, *Testimony Presented to the House Education Committee's Subcommittee on Violence in the Schools*, Lansing, 11 February 1998, 1.

15. Michigan, *Senate Bill 313*, sec. 380.1311A(1), as passed by House 13 May 1998.

16. Michigan, *House Bill 5482*, sec. 380.1310(4) as passed by House 17 June 1998.

17. Wagenheim, *Testimony Presented to the House Education Committee's Subcommittee on Violence in the Schools*, 2.

18. Brent Simmons, *Testimony Presented to the House Education Committee's Subcommittee on Violence in the Schools*, Lansing, 11 February 1998, 2–3.

19. *Cafeteria Workers v. McElroy* 367 US 886, 895 (1961) as quoted in Goss 419 US, at 578.

20. Michigan Advisory Committee to the U.S. Commission on Civil Rights, *Discipline in Michigan Public Schools and Government Enforcement of Equal Education Opportunity*, 42.

21. Ibid.

22. Bogos, *"Expelled. No Excuses. No Exceptions,"* 371.

23. *Michigan Compiled Laws, Annotated* sec. 380.1311(5)(e)(i–vii).

24. Interview by author, 6 July 1998, tape recording.

25. *Michigan Compiled Laws, Annotated* sec. 380.1311(8).

26. Michigan Department of Education, *Report on Expulsions and Suspensions in Michigan for the 1995–1996 School Year*, by Lucien Parshall, (Lansing, 4 February 1997), 1.

* The "current bills" referenced in the text lapsed with the close of the 89th legislative session, December 31, 1998. The 90th session convened January 26, 1999. We expect the bills discussed in this section to be reintroduced.

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8

Balancing State and Local Control

Notwithstanding pronouncements to the contrary, Governor John Engler of Michigan has managed to extend the arm of the state into local school districts through his vigorous support of rigid mandatory expulsion requirements. Engler has repeatedly blamed the failure of public education on federal control that undermines local authority.[1] Ironically, Michigan's mandatory expulsion requirement undermines local control, precisely because it does not give local districts the discretion to decide for themselves what punishment is appropriate for weapons-related offenses. The rigid requirements of the current law preclude the kind of flexible due process that the State Board of Education recommends.[2] Professor Simmons observes that the law "...refuses to distinguish between the hard-core offender and the child who simply happened to be in the wrong place at the wrong time...it mandates permanent expulsion in all cases, without regard to mitigating circumstances and without deference to the sound discretion of educators."[3]

Such has been the case in districts across the country where students have been expelled under zero-tolerance policies for seemingly innocuous "offenses." The most famous of these cases, known as "The Midol Case," occurred in Fairborn, Ohio.[4] Kimberly Smartt, an eighth grader took two Midol tablets from the school nurse's office to relieve her menstrual cramps. She took one herself and gave the other to a friend who was also complaining of cramps. Kimberly was expelled from school for "transmitting" a drug. Her friend, charged with simple possession, was suspended for only ten days. Kimberly's family filed suit, and the media took great interest in the case, but little coverage of the final verdict upholding the expulsion reached the newspapers. A similar case in Alexandria, Louisiana reached the front page of the New York Times.[5] There Kameryan Lueng became a victim of the Rapides Parish zero-tolerance policy after she brought a family heirloom to school. The pocket watch also included a one-inch knife that its owner had used to clean his fingernails. Kameryan was removed from school and placed in a "Redirection Academy." As the *New York Times* noted, most zero-tolerance policies "...leave principals little discretion in handling infractions...there is widespread agreement that strict punishments are appropriate in serious cases. But as zero-tolerance policies become more widespread there is growing debate about whether mandatory punishment makes sense in cases like Kameryan's...in which there was no intent to cause harm."[6] According to Lueng's father, by adopting rigid zero-tolerance policies "'We have isolated our children and taught them that once they have gotten into trouble, they're doomed. We don't need zero-tolerance. We need to put our faith and trust and support in our principals."[7] A similar case was documented in Seattle, where a 10-year-old boy was expelled for bringing a one-inch plastic gun to school. His punishment was later reduced to a three-day suspension after the board was ridiculed by newspapers across the country.[8] In reference to the Seattle case Mary Gannon, director of policy services for the Iowa School Boards Association, argued that "'It's silly to expel a third grader for a year...[they] probably have no understanding of the repercussions of their

actions...You're just going to ruin [a] child's life if he's out of school for a year."[9]

In Michigan the recent expulsion of seven students from the Muskegon Public Schools has raised questions about excessive punishment for minor and, in some cases, non-stipulated offenses. While the Michigan School Code permits local school districts to develop their own discipline policies,[10] the State Board of Education has outlined what it deems to be acceptable local discipline policy. Such policy "...defines the conditions under which students may be suspended or expelled..."[11] and specifies the procedural due process safeguards to be utilized when implementing locally adopted policies. Furthermore, court decisions support the need for discipline to comport with explicitly outlined district policies. In *Matter of P.J.* the Third District Court of Appeals ruled in favor of P.J., a student wishing to return to school after expulsion for drinking alcohol on school property. The court noted that P.J. would "suffer irreparable injury" by her continued expulsion, and that the applicable school handbook did not mandate expulsion for consuming alcoholic beverages on school property. Rather, it mandated only a five-day suspension.[12]

Yet in Michigan many districts cited offenses that do not constitute grounds for expulsion under state law, and in some cases are not stipulated in local codes. For example, two elementary school students, ages 8 and 10, were expelled for chasing other students around the playground with lighters.[13] Muskegon's superintendent admitted, "possession of a lighter is not a crime..."[14] but recommended expulsion nonetheless, even though district policy did not mandate expulsion for that offense. In Shawn's case, he and the three other boys were initially charged with Criminal Sexual Conduct. When the board admitted it had no evidence they changed the charge to sexual harassment, ignoring the fact that the sexual contact was consensual. And in Bay City several students were expelled for allegedly "being in a stolen car on way to school," and "incorrigible behavior."[15] All of these expulsions were cited as necessary under the mandatory expulsion requirement of section 1311. There have also been a number of cases in which disobedience was cited as the violation. While certain proponents of iron-fisted discipline view disobedient students as "institutional saboteurs" waging a guerrilla war against teachers,[16] to most such behavior is expected of schoolchildren. This high incidence of expulsions for children who simply misbehave raises serious questions about the way in which discipline is being administered.

Fortunately, a small number of Michigan school districts have defiantly asserted their right to local control in weapons cases, which they did not believe warranted expulsion. The Olivet Community Schools provide an excellent example of the delicate balance between state law and local discretion. Located in central southern Michigan, Olivet is a small rural district where some students hunt recreationally. Olivet's superintendent explained that the district does not believe all weapons cases call for expulsion, and the circumstances of each individual case should be considered.[17] Often, expulsion was not warranted because the situation fell under one of the exception clauses. In one case, two students were stopped while driving on school property, and a gun was found in the car. At the school board hearing one student "stated that he did not intend to harm anyone, and...his guns were used for hunting purposes only."[18] The second student told the board "...he knew he had done wrong and that it was stupid to leave the guns in the vehicle."[19] Both students emphasized that they were working very hard in school and wanted to graduate at the end of the year.[20] School board minutes indicate that the principal informed the students that they might be expelled but "he felt the most pertinent issue in this case was that he believed that there was no intent to harm by either of these students."[21] The board voted 6–0 to suspend the students for ten days, and give them 40 hours of community service.[22] In a similar case, three students caught with weapons appeared at a closed hearing before the school board. The board voted 6–0 to require the students to:

> Prepare a report of a minimum of three pages that discusses information that the student has read about violence in the schools...In addition, the students will prepare a scrapbook of at least ten articles and pictures about the issue of violence in the schools and the results of weapons in schools. Finally the students will spend a session, before or after school, with the DARE officer, a county Sheriff Deputy or a State Police Officer...If these conditions are not met, the student(s) will be suspended for the remainder of the school year.[23]

Several organizations have expressed concern over what they believe is state interference in local affairs. The superintendents of the 23rd State House district, south of Detroit told the House Subcommittee on School Violence in no uncertain terms

> As educators...we want you to be fully aware that we are very cautious and sensitive to language that will **mandate consequences** for actions and which will **do away with our ability to govern.** Each of our school districts has worked very hard for a long time

to ensure violence is not the norm but the rare exception. **Don't mandate, instead allow us to govern.**[24]

The Michigan Association of Secondary School Principals expressed similar dismay at the erosion of local, and building authority. They observed that: "Principals had more flexibility in dealing with weapon carrying students before the recent legislative requirements...The [current] policy presently does not allow districts to actively work with the expelled students in finding alternative education opportunities...."[25] The present law has often forced building administrators to act in the capacity of police investigators when the infractions are also criminal in nature. The result has been students being expelled without the filing of proper criminal charges. Law enforcement officers working as school liaisons have decried this practice and urged school administrators not to expel unless criminal intent is shown. As one officer told the House Subcommittee: "Our policy since the law was enacted is to only expel students where their intention was to do harm...Please make sure the word 'intent' is included in that legislation.[26] According to Professor Simmons, current practices may violate the state constitution because they confer upon school boards powers that are reserved for the judicial branch, by allowing boards to make findings of criminal violations without any prior judicial determination of guilt.[27] Moreover, he observed that "...when the Michigan Legislature imposes the additional duties of law enforcement investigators upon school officials, it obscures their primary role as educators. It reinforces a siege mentality that assumes teachers are in a perpetual war with students. It simply isn't so."[28] The case of a Washtenaw County first grader provides an excellent example of this "siege mentality." After one student struck another student on the head with the blunt end of a pair of school owned scissors, the teacher called the police claiming that a student had been "stabbed." This led to a police investigation of a six-year-old before his parents were even notified![29]

In this light, Olivet's policies seem eminently reasonable. In contrast to the rest of the state this district emerges as an island of sanity in a sea of hysteria. Olivet provides an example of local control accompanied by the procedural safeguard of a hearing at which students present their case. It is evident that state mandated due process guidelines and local control of school discipline are not mutually exclusive. Allowing local districts discretion in each case ensures that school boards and principals are not forced to impose excessive punishment against their better judgment solely because the state mandates it. Likewise, statutory due process guidelines would protect students like Martin and Shawn from arbitrary and capricious punishment by local school boards. Such a policy would enshrine in law the necessary due process requirements while protecting local authority.

NOTES

1. John Engler, *U.S. Taxpayer Survey on Federal Control of Our Schools*, (Washington DC: Heritage Foundation, undated).

2. Michigan Advisory Committee to the U.S. Commission on Civil Rights, *Discipline in Michigan Public Schools and Government Enforcement of Equal Education Opportunity*, 42, 108.

3. Brent Simmons, *Testimony Presented to the House Education Committee's Subcommittee on Violence in the Schools*, 2.

4. The following account is based on a summary of the events as described in Perry A. Zirkel, "The Midol Case," *Phi Delta Kappan*, June 1997, 803–804.

5. This account is based on Tamar Lewin, "School Codes Without Mercy Snare Pupils Without Malice," *New York Times*, 12 March 1997, 1(A) et seq.

6. Ibid.

7. Lewin, "School Codes Without Mercy Snare Pupils Without Malice," 7(B).

8. Rebecca Jones, "Absolute Zero: Do Zero-Tolerance Policies Go Too Far?" *American School Board Journal*, October 1997, 29.

9. Ibid., 30.

10. *Michigan Compiled Laws, Annotated* sec. 380.1300.

11. Michigan Advisory Committee to the U.S. Commission on Civil Rights, *Discipline in Michigan Public Schools and Government Enforcement of Equal Education Opportunity*, 104.

12. *Matter of P.J.*, 575 N.E.2d (1991) 22, 24.

13. Karas, "Muskegon Schools Expels [*sic*] 7 Students," 1(A).

14. Ibid.

15. Correspondence between author and Bay City Public Schools, Student Advocacy Center Files, Ann Arbor.

16. Dupre, "Should Students Have Constitutional Rights: Keeping Order in the Public Schools," 52.

17. Telephone conversation with Olivet Community Schools' Superintendent Chris Wigent, 26 June 1998.

18. Olivet Community Schools, *School Board Minutes*, 8 May 1995, 2.

19. Ibid., 3.

20. Ibid., 2–3.

21. Ibid., 2.

22. Ibid., 3–4.

23. Ibid., 26 February 1997, 2.

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24. Superintendents of the 23rd House District, *Testimony Presented to the House Education Committee's Subcommittee on Violence in the Schools*, Trenton (Mi.), 19 February 1998, 2.

25. Michigan Association of Secondary School Principals, *A Statement from the Michigan Association of Secondary School Principals Regarding Violence in the Schools*, as presented to the House Education Subcommittee on Violence in the Schools, 14 January 1998, 1.

26. Jay DeWispelaere, *Testimony Presented to the House Education Committee's Subcommittee on Violence in the Schools*, 1.

27. Brent Simmons, *Legal Analysis of Mandatory Expulsion Provision*, July 1997, Student Advocacy Center Files, Ann Arbor, 1–3.

28. Simmons, *Testimony Presented to the House Education Committee's Subcommittee on Violence in the Schools*, p. 1.

29. Interview by author, 26 June 1998, tape recording.

9

Alternatives to Expulsion

In contrast to Olivet, expulsion rates are rising in many districts. In Lansing, the legislature is debating bills that would create additional grounds for expulsion while the governor advocates toughening the rules even further, all in the name of better public education.[1] The dominant philosophy maintains that "The imposition of such harsh measures is imperative for the state to adequately provide a safe environment for children to learn."[2] Simmons eloquently exposes the hypocrisy of this approach:

> How can it be that a State, which is a leader in educating its citizenry is also a leader in expelling students—especially those students most in need of an education? It is my hope that this [House Education] Subcommittee will redirect the attention of the Michigan Legislature toward finding ways of keeping more children *in* school, rather than seeking out additional grounds for *mandating* their expulsion.[3]

Simmons is not alone in this position. The National Association of State Boards of Education noted "...as visionary leaders, state boards of education and state education agencies should develop alternatives to expulsion that, to the greatest degree possible, can be carried out within the regular school setting."[4] The Michigan League for Human Services warned "...this discussion should not solely focus on punishment as a deterrent, and it **must not** see exclusion as a solution....That approach only serves to erode the stability of the children and their families...by further excluding them from educational opportunity and isolating them from the systems in place to provide needed assistance."[5]

Other states have acknowledged in statute that expulsion is not the best way to deal with disciplinary problems. The State of California encourages schools to consider alternatives to off campus suspension and expulsion,[6] Utah mandates that "Each local school board shall establish policies providing that prior to suspending or expelling a student...good faith efforts shall be made to implement a remedial discipline plan that would allow the student to remain in school..."[7] and in Kentucky, a Supreme Court decision requiring school funding reform led to the development of a statewide "zero-reject" policy. Two of the Kentucky policy's architects describe the rationale for such an approach:

> Kentucky recognizes that education has fundamental implications for crime prevention...the Commonwealth of Kentucky will not give up on the education of any of its youths. Adherence to a philosophy, policy, and practice of zero-reject—of funding the education of every youth—will help Kentucky meet the challenges of the next century.[8]

In stark contrast to the Michigan legislature the State of Colorado offers a forthright rejection of expulsion as an effective punishment, declaring:

> The general assembly hereby finds that expulsion should be the last step taken after several attempts to deal with a student who has discipline problems. The general assembly further finds that school districts should work with the student's parent or guardian and with state agencies and community-based nonprofit organizations to develop alternatives to help students who are at risk of expulsion before expulsion becomes a necessary step and to support students who are unable to avoid mandatory expulsion.[9]

Unfortunately Michigan has not yet come to this realization. Instead, our state has opted for short-term solutions while ignoring the root causes of the problem. Rather than confront the uncomfortable truths that underlie school violence, we have chosen to accept the comfortable lie that "bad children" and "bad parents" are to blame. And until the legislature enacts more comprehensive and effective legislation the State of Michigan will only become more deeply mired in the myopic morass of punitive policymaking.

Nevertheless, several innovative policies have been recommended, and in some cases implemented, across the state of Michigan. For instance, the Detroit Public Schools have created a violence reduction program premised on the belief that:

> ...violence is a learned behavioral response...most young people want to make the world a better place, but often lack the experience, skills, hope, parental support, community support, societal support, and a clear vision of how to realize those aspirations. We must begin to teach students anti-violence techniques/lessons in the same manner that we address cognitive areas.[10]

Detroit has implemented a variety of smaller programs including conflict resolution, gang prevention, anger management, peer mediation, and community service programs. According to the district,about 90,000, or slightly more than 50 percent of students, are involved in these programs on a daily basis. The most successful program has been the Lions-Quest *Working Towards Peace* program. According to Deborah Prothrow-Stith, Assistant Dean at the Harvard School of Public Health, this program has led to a decrease in violent activities, classroom misconduct, and truancy while raising student's GPAs and improving their conflict resolution skills.[11] But a district representative warned that violence prevention will never be successful until the city and the state address the structural problems plaguing its residents: "We need the City of Detroit to assist us in the elimination of dangerous abandoned buildings and blighted areas through which our children must travel to and from school. We need assistance from the state and the city to increase policing...[and] provide alternative after-school programs...."[12] Other districts offering innovative programs include Kalamazoo, which has established a youth violence prevention program stressing parent and student involvement,[13] and the Fitzgerald Public Schools now offer a life-skills program for at-risk children that focuses not only on students but also involves parents, teachers, the FIA, and police and courts when necessary.[14]

Psychologists, social workers, and psychiatrists have also offered important perspectives on current school discipline policies. J. Steingold of Wayne State University stressed that early intervention and improved assessment are the two most important tools needed to reduce school violence.[15] Carolyn Pryor, also of Wayne State University, described violence as a societal and an individual problem and recommended that youths be given a voice in policy-making, and that students coping with trauma should be assisted by social workers.[16] Robert Oppenheimer, a Community Mental Health psychologist who worked in a middle school suggested that students with weapons should be suspended for a short period of time and given emergency counseling while out of school. He warned that "...anytime you throw kids out like this, there's a good chance you're throwing them into a worse setting."[17] He insisted that schools need to look at what is going on in children's lives and give them access to individual therapy. In many cases guidance counselors are so busy scheduling and helping with college applications that they do not have time for this. Oppenheimer said that Community Mental Health programs in the schools can be extremely helpful but they are presently available only in Wayne County, in twelve schools.[18] Most importantly these children need an adult who cares about them and is willing to listen, something that is absent from their lives in many cases.

These intervention and prevention programs offer a much more promising approach to reducing school violence than the "quick-fix" solutions of zero-tolerance. Admittedly, there are situations in which students pose an undeniable threat to those around them and removal from the school setting is warranted. However, in such situations comprehensive alternative education programs and psychological intervention services must be provided, otherwise these troubled students will be left on the street to fend for themselves, posing an even greater threat to society.

NOTES

1. Kelly L. Anderson, "Expel Violent Students, Engler Says," *Oakland Press*, 2 June 1998, 1(A).

2. Bogos, "Expelled. No Excuses. No Exceptions," p. 364.

3. Simmons , *Testimony Presented to the House Education Committee's Subcommittee on Violence in the Schools*, 2.

4. National Association of State Boards of Education, *Policy Update* 6, no. 10 (1998): 1–2.

5. Michigan League for Human Services, *Testimony Presented to the House Education Committee's Subcommittee on Violence in the Schools*, Lansing, 11 February 1998, 1.

6. *Annotated California Education Code*, sec. 48911.2.

7. *Utah Code, Annotated*, sec. 53A-11-906, (Michie, 1998).

8. Bruce I. Wolford and LaDonna L. Koebel, "Reform Education to Reduce Juvenile Delinquency," *Criminal Justice*, Winter 1995, 56.

9. *Colorado Revised Statutes, Annotated*, sec. 22-33-201, (West, 1990, 1996).

10. Detroit Public Schools, *Testimony Presented to the House Education Committee's Subcommittee on Violence in the Schools*, Detroit, 13 January 1998, 1–2.

11. Cover letter in Molly Laird and Mike Syropoulos, *What Works in Violence Prevention*, (Newark, OH , Quest International, 15 November 1996).

12. Ibid., 5.

13. Kalamazoo Regional Educational Service Agency, *Testimony Presented to the House Education Committee's Subcommittee on Violence in the Schools*, Battle Creek, 2 February 1998.

14. Fitzgerald Public Schools, *Testimony Presented to the House Education Committee's Subcommittee on Violence in the Schools*, Detroit, 13 January 1998.

15. J. Steingold, *Testimony Presented to the House Education Committee's Subcommittee on Violence in the Schools*, Detroit, 13 January 1998.

16. Carolyn Pryor, *Testimony Presented to the House Education Committee's Subcommittee on Violence in the Schools*, Detroit, 13 January 1998.

17. Interview by author, 10 August 1998, tape recording.

18. Ibid.

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10

Alternative Education

Zero tolerance for weapons in school is a common sense policy....Under the current law, students found carrying weapons such as guns and knives on school property get no second chance, no appeals and no guarantee of alternative school programs...Relaxing the law could ultimately result in a toothless, escape-clause riddled regulation, effectively destroying the purpose of the law.

Detroit News, Oct. 19, 1995[1]

While the classrooms will be safer, what will happen to our streets, our sidewalks?

Grand Rapids Press, Dec. 21, 1994[2]

As a result of the current "get tough" mentality, as exemplified by the Detroit News' position, Michigan's expelled students have been left without any educational services whatsoever. But the fact remains that quality alternative education programs are crucial if the problem of youth violence is to be solved—a position shared by numerous academic researchers and educational organizations.[3,5,8,9] Kentucky's reform education initiative is an exemplary alternative program that involves educators, juvenile justice workers, and various state agencies.[5] Yet nationwide such innovative programs are the exception rather than the rule. Unfortunately, Michigan is among those states that have failed to provide alternative education to the overwhelming majority of their expelled students.[4]

Criticism of the expulsion law for its lack of an alternative education mandate has been widespread since it was enacted in 1995. To many it represents a false remedy, and at best is a short-term solution. As Paul M. Bogos of the University of Detroit Mercy argues:

> While the zero-tolerance policy aims to protect the safety and well being of the faculty and students in school, at the same time, the law punishes society by withholding the fundamental right of an education to a child.... Without a provision guaranteeing an alternative educational program for those students expelled for a weapon violation, no productive structure is provided for those students who may be the most in need....This should raise questions among state legislators and school officials about whether more emphasis should be placed on trying to rehabilitate those students who are expelled, rather than removing them completely from the school system.[5]

This position has been reiterated by educators, reporters, and students across the country. In the wake of the Springfield shootings, a college student who was expelled in high school told a national audience "Expelling violent students is not the answer. The last thing we need is to put kids out on the street. We need to try to make kids aware of what direction they are taking...and get them to look toward the future...I certainly didn't know I was destroying myself and my future at the time."[6] Ellen Ewing, superintendent of the Saline school district observed that by expelling students "...you've only moved the problem. You're only treating the symptom. The root cause is left unattended."[7] Other educational organizations have expressed support for alternative education as well. The Michigan Association of Secondary School Principals stated that expelled students must receive educational services."[8] The National Association of State Boards of Education also stressed the need for alternative education, "Expulsion without alternatives is not a solution to youth violence. Efforts must be made to keep disruptive or delinquent students, to the maximum extent possible, in their neighborhood schools. At a minimum, alternative programs with strong academic and counseling components should be provided."[9] Many critics of alternative education point out that the fiscal burden incurred by the new programs would be too much for local and state governments.[10] While such programs are likely to cost approximately 25 percent per pupil more than average, the Michigan Federation of Teachers (MFT) noted that "...the benefits returned to society by alternative placements make them a worthwhile

investment...."[11] The MFT estimated the potential social benefits of alternative education to be $20,650 per year, taking into account learning time that would have been lost, reduced grade repetition, added tax revenue, reduced welfare costs, and reduced prison costs, while alternative education would only cost approximately $7,000.[12]

In addition to educators, law enforcement officers have been among the most vocal proponents of alternative education programs in order to diminish the fallout from the mandatory expulsion law. Ann Arbor Deputy Chief of Police Jack Ceo, who is also a trustee on the Saline Board of Education, argues that "...any bill calling for mandatory expulsion of a student for any reason needs to be accompanied by a reasoned method for insuring that the person continues to receive an education, and does not just put them out on the street to become a further problem for the police, and, ultimately, a burden on society."[13] Law enforcement officers across the state share Ceo's position. The Michigan Police Legislative Coalition, the Michigan Association of Chiefs of Police, the Police Officers Association of Michigan, and the Fraternal Order of Police all submitted statements to the House Subcommittee in support of alternative education amendments.[14]

Even the man who is widely regarded as the father of zero-tolerance policies insists that alternative education is a necessary component in any such policy. John Cole, president of the Texas Federation of Teachers, created the Texas policy with provisions for alternative education in mind. According to Cole "'If there's no place to send a student, what you have is a suspended student hanging out in the school playground...it's a perfect lesson that if you want a free vacation, you punch out the teacher."[15] Ironically Senate Bill 313—which passed the Michigan Senate on June 4, and has yet to pass the House—would require expulsion for assault against teachers, without mandating any alternative education placements.[16]

While it is abundantly clear that alternative education is necessary, there is no consensus on how such programs should be implemented. Republican legislators have remained content with permissive language *allowing* students to enroll in alternative education programs, but not *mandating* them to do so. Michigan Attorney General Frank Kelley concluded in 1985 that a school district expelling a non-handicapped student is not required to provide that student with alternative education.[17] However, Kelley noted that "...the Legislature may, if it so desires, amend the School Code of 1976 to require alternative education programs for students that receive lengthy suspensions or expulsions."[18] This conclusion is elaborated upon in *Walter v. School Board of Indian River County* in which a Florida student's expulsion without alternative education was upheld with reservations. The court observed that:

> The absence of an alternative educational program in Indian River County points out the inadequacies of funding children's needs legislatively...While this child has been properly expelled under the law, that does not justify any smugness on the part of this court or society in view of the fact that...society has failed to commit the resources necessary to prevent or humanistically deal with the problem.[19]

Similarly in *Matter of Jackson* a North Carolina court found itself constrained to interpreting the law and unable to mandate alternative education,

> ...an appropriate education is not nearly as expensive as the alternative, considering the fact that the average education level of all prisoners in North Carolina is the 6th grade...Notwithstanding these grim statistics, a juvenile court judge does not have the power to legislate or to force school boards to do what he thinks they should do. Our legislature did not impose upon the public schools or other agency a legal obligation to provide an alternative forum for suspended students, and a court may not judicially create the obligation.[20]

Quite simply, alternative education for expelled students *cannot* become a reality absent a legislative mandate requiring schools to provide it. In reaching this conclusion, Attorney General Kelley refers the reader to *Turner v. Kowalski*, a New York case that upholds the right of suspended students to receive educational services by citing statutes mandating "'immediate steps' to secure their 'attendance upon instruction elsewhere' during their period of suspension."[21] *Turner* offers us a glimpse of what Michigan might look like once students' educational rights become enshrined in statute.

Other states provide Michigan with a model for such legislation. California offers comprehensive legislation regarding alternative schools including the establishment of community day schools,[22] rehabilitation programs,[23] and county plans for providing educational services to expelled pupils.[24] Virginia provides extensive guidelines for alternative education programs while appropriating funds for their establishment.[25] The programs are to include high standards, low pupil-teacher ratio, an emphasis on self-esteem building, extended day programs, and community outreach.[26] Mississippi also requires the school boards of each district to maintain and operate alternative programs for expelled children

and others referred to the program.[27] Similarly, Texas's zero-tolerance policy mandates alternative educational placements for both expelled students, or any other student referred to the program.[28] Several other states have some sort of mandate requiring continued educational services, although these services are not specifically defined as they are in the above laws. These states include Colorado, Maryland, Minnesota, Missouri, Nebraska, New Jersey, New York, Ohio, and Tennessee.[29]

All of these states' laws are examples of legislative action to ensure that expelled students continue to receive an education. However, one must also be wary of laws that permit easy referrals to such programs transforming them into readily accessible "dumping grounds"[30] for any and all students whom teachers do not want to deal with. In Texas "What began as a discussion on how to effectively address serious student offenders was quickly expanded to a much broader initiative to increase educators' prerogatives to remove *any* student considered to be disruptive."[31] Furthermore, studies by the Intercultural Development Research Association reveal that "There is the potential for overusing alternative education program referrals and for using this punitive measure disproportionately against certain groups of students."[32] In addition, questions have been raised about due process procedures before students are transferred to an alternative program, as well as the Texas high number of placements (80,000) and the increasing number of dropouts attributed to such transfers.[33] Hence it is imperative that alternative programs offer high quality services; furthermore they must be fairly administered. The National Center for Education Statistics and the Department of Justice have offered models of quality programs. Some characteristics include: low student/staff ratio, strong leadership, highly trained staff, intensive counseling and mentoring, innovative curriculum and pedagogy, parental involvement, and collaboration with other agencies and schools.[34]

The American Federation of Teachers (AFT) has drawn up similar guidelines for quality alternative programs. In addition to the above recommendations, the AFT emphasizes the need for accountability to be built into such programs.[35] This is particularly important in an era when for-profit alternative education programs have become a multi-billion dollar industry, and enjoy great popularity in states where no legislative mandate for alternative education exists.[36] But these programs are often run more like businesses than schools and curriculum and academic standards are sacrificed in favor of efficiency and profitability.[37] The AFT also stresses the need for a flexible continuum of possible alternative placements, depending on the student's needs.

Alternative education is an essential antidote to the debilitating effects of mandatory expulsion on students, their families, and society at large. Hence, Michigan's first task is to establish such programs. But in designing these programs legislators must be wary of allowing too many conditions for referral, so as to prevent the alternative schools from becoming warehouses for students deemed difficult or undesirable. Moreover, a variety of programs should be created for students with different needs, while reflecting the models provided by the AFT and the federal government. In so doing, the State of Michigan would take a gigantic step away from the current policy of short-term solutions toward the far more sensible goal of educating all of our children.

NOTES

1. at 12(A)

2. at 1(C)

3. Bruce I. Wolford and LaDonna L. Koebel, "Reform Education to Reduce Juvenile Delinquency," *Criminal Justice*, Winter 1995, 56.

4. Michigan Expulsion Data 1995–1997, Student Advocacy Center of Michigan, Ann Arbor, and Michigan Department of Education, *Report on Expulsions and Suspensions in Michigan for the 1995–1996 School Year*, by Lucien Parshall, (Lansing, 4 February 1997).

5. Bogos, "Expelled: No Excuses, No Exceptions," 380.

6. Tena Lewis, "Don't Expel the Violent Child," *MSNBC*, http://msnbc.com/news/167465.asp, 22 May 1998.

7. As quoted in "Weapons Law Gets Mixed Grades," *Ann Arbor News*, 30 August 1996, 1(C) et seq.

8. Michigan Association of Secondary School Principals, *Bulletin 59*, no. 9 (1998).

9. National Association of State Boards of Education, *Policy Update* 6, no. 10 (1998), 2.

10. Bogos, "Expelled: No Excuses, No Exceptions," 386.

11. Michigan Federation of Teachers, "Safe Schools a Requirement for Learning," *Forum* 57, no. 5 (December 1997–January 1998), 2.

12. Ibid., 2.

13. Jack Ceo, *Testimony Presented to the House Education Committee's Subcommittee on Violence in the Schools*, Whitmore Lake, 9 February 1998, 3.

14. Letters to the House Subcommittee on Violence in the Schools: Michigan Association of Chiefs of Police, 1 May 1998; Michigan Police Legislative Coalition, 5 May 1998; Police Officers Association of Michigan, 6 May 1998; Fraternal Order of Police, 6 May 1998.

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15 "Teacher's Union Wants to Expel Kids Who Carry Guns," *New York Times*, 19 July 1994, 15(A).

16 Michigan, *Senate Bill 323*, as passed by Senate 4 June 1998.

17 Michigan, *Report of the Attorney General*, Opinion no. 6271 (1985), 16–17.

18 Ibid., 17.

19 518 So.2d 1351 (1987).

20 *Matter of Jackson* 352 S.E.2d 449, 456 (1987).

21 374 N.Y.S.2d 133, 135 (1975).

22 *Annotated California Education Code*, sec. 48662.

23 Ibid., sec. 48916.

24 Ibid., sec. 48926.

25 *Code of Virginia*, sec. 22.1-209.1:2(A). (Michie, 1997, 1998).

26 Ibid., sec. 22.1-209.1:2(B)(4-8).

27 *Mississippi Code of 1972, Annotated*, sec. 37-15-92. (1996, 1998).

28 *Vernon's Texas Education Code, Annotated*, sec. 37.008. (West, 1996, 1998).

29 See *Colorado Revised Statutes, Annotated*, sec. 22-33-204(5); *Annotated Code of Maryland*, sec. 7-305(3). (Michie, 1997); *Minnesota Statutes*, sec. 121.38. (1996, 1997); *Missouri Revised Statutes*, sec. 167.164. (1994); *Revised Statutes of Nebraska*, sec. 79-266; *New Jersey Statutes, Annotated*, sec. 18A:37-9. (West, 1989, 1998); *McKinney's Consolidated Laws of New York, Annotated*, Title 16, sec. 3214(4)(D). (West, 1995, 1998); *Page's Ohio Revised Code, Annotated*, secs. 3301.121, 3313.64, 3313.662(3). (Anderson, 1997); *Tennessee Code, Annotated*, sec. 49-6-3402. (Michie, 1996, 1997).

30 American Federation of Teachers, "Setting the Stage for High Standards: Elements of Effective School Discipline," *National Campaign for Standards of Conduct, Standards for Achievement*, 11.

31 Albert Cortez, "Alternative Education Programs: Resolution or Exclusion?" *IDRA Newsletter 24*, (November–December 1997): 1.

32 Ibid., 1.

33 Ibid., 2.

34 United States Department of Justice, Office of Juvenile Justice and Delinquency Prevention, *Juvenile Justice Bulletin*, (February 1997), 5.

35 Steve Bickerstaff, Sarah Hardner Leon, J. Greg Hudson, "Preserving the Opportunity for Education: Texas' Alternative Education Programs for Disruptive Youth," *Journal of Law and Education 26*, no. 4 (1997): 16–19.

36 Jessica Portner, "For-profit Alternative Schools are Hot Commodities," *Education Week*, 8 July 1998, 1 et seq.

37 Ibid., 18.

11

Conclusion

...It is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education.

Brown v. Board of Education, 347 U.S. 483 (1954)

...these kids made a mistake but they shouldn't be thrown out the door and damned for it for the rest of their lives...

Professor Brent Simmons, Thomas M. Cooley School of Law

Since its inception, Michigan's mandatory expulsion law has failed to curb the problem of youth violence while depriving hundreds, perhaps thousands of school-age children of their right to an education. Currently, the state legislature is involved in a debate hinging on the question of whether or not "disciplinary" education should be provided for expelled students. Legislators favoring the program argue that "We have a new population of children who are unsupervised almost 24 hours a day..."[1] while those opposed claim such programs would be unfair because expelled students "...will get more attention than the regular students."[2] And although those who are supportive recognize that more attention is precisely what expelled students need, their current proposals still fall short of providing comprehensive *quality* alternative education.

In order to create more meaningful, lasting solutions it is imperative that the current debate in the legislature shift its focus from creating *more punitive* policy to creating *more effective* policy. As this report makes clear, current legislation is lacking in many respects. Below is a list of recommendations for legislators attempting to create a more measured and effective response to the problem of school violence. Any such legislation must:

- Protect the civil rights of all students, and safeguards against discriminatory discipline practices that lead to disproportionate expulsions of African-American students.
- Maintain compulsory attendance requirements and the creation of less stringent disciplinary measures for students under the age of sixteen, in order to ensure that these children are not left alone, unsupervised, and without educational services.
- Clearly define and rigorously enforce reinstatement procedures, including assistance for families preparing petitions.
- Create state mandated due process protedures designed to protect the constitutional rights of students going through the expulsion process.
- Permit local administrators to use their own discretion in deciding whether to expel students based on the circumstances of each individual case.
- Mandate referral of all expelled students to quality alternative education programs supervised by local officials and the State Department of Education. These programs should include high academic standards, counseling, and violence prevention programs.

- Demand extensive data collection and require reporting in each district. The information collected by the State Department of Education should include: number of expulsions, grounds for expulsion, state agency referral after expulsion, and alternative education provided. The states of Massachusetts and California provide excellent models for such data collection.[5] It is also imperative that all of this information be disaggregated according to race, gender, age, special education status, and free lunch eligibility in order to determine whether certain groups of students are being expelled in disproportionate numbers.
- Appropriate the necessary funds for all of the aforementioned programs.

More than anything, it is vital that educational policy become proactive rather than reactionary, for as the mandatory expulsion law has shown us, policy produced in reaction to crisis has countless pitfalls and, in the end, only creates a greater burden for society.[4]

In formulating policy alternatives it is instructive to recall the old common-law doctrine of *parens patriae*, or the state as parent, which provides the legal foundation for America's public education system. Premised on this belief that the state should protect the welfare of all its subjects, we have established public schools and compulsory attendance laws in all fifty states. Out of *parens patriae* grew the concept of *in loco parentis*, the idea that the state should act in the place of the parent.[5] Historically, *in loco parentis* has been invoked by those favoring unfettered school authority as the ideal relationship of schools to their students. The same concept of rigidly maintained discipline undergirds the philosophy of zero-tolerance. Strangely, the proponents of mandatory expulsion have failed to recognize the logical and moral contradictions inherent in such a position. For in constructing the school as parent, we assume not only that it should discipline its children, but care for them as well. Yet in adopting zero-tolerance policies with no provision of alternative education we have effectively forsaken our responsibility to care for *all* children, and with it the common-law foundations of our nation's public education system. Such is the sad irony of a society in which we condemn those parents who abandon their children but condone those schools who abandon theirs.

But the most damning critique of Michigan's mandatory expulsion requirements comes from expelled students themselves, from the victims of a policy that refuses to distinguish between violent offenses and foolish mistakes, and places greater emphasis on keeping kids out of school than getting them back in. Their silenced voices make the most compelling case for reform. Kevin of Monroe County has been out of school for nearly two years. He explained:

> I want to go back to school and I've been sayin' that since I got kicked out, but that don't seem to matter to them...I feel as though they think I'm a puppet or something. They say 'do this, do this' but it's not helpin' me none. I don't see why they put me through it if it's not helpin' me none, and its not helpin' towards gettin' back to school...it's like they're just tryin' to make me *dance...dance...*[6]

Kevin's words are a wakeup call to all of us who care about the fate of our children. As this study makes clear, the perils of zero-tolerance policies are numerous. Michigan's schools and students desperately need legislation that ensures equity, mandates compulsory attendance, allows eligible students to be reinstated, and guarantees alternative education without limiting local control or denying due process rights. In addition, any such law must require rigorous data collection in order to monitor its effects. Until such legislation is passed, students like Kevin will remain Michigan's least wanted citizens: nothing more than powerless puppets trapped in the tangled strings of misguided policy and legislative neglect.

NOTES

1. As quoted in Robert C. Johnston, "Mich. Lawmakers Debate School Safety Bills," 1 April 1998, 22.
2. Ibid.
3. See Commonwealth of Massachusetts Department of Education, *Student Exclusions in Massachusetts Public Schools: 1996–97*, (Malden, MA, 20 January 1998); and *Annotated California Education Code*, sec. 48916.1(a-f).
4. Philip T.K. Daniel and Karen Bond Coriell, "Suspension and Expulsion in America's Schools: Has Unfairness Resulted from a Narrowing of Due Process?" *Hamline Journal of Law and Public Policy 13*, no. 1 (1992): 36.
5. Bernardine Dohrn, "Children and the Law," *Criminal Justice*, Summer 1995, 10.
6. Interview by author, 6 July 1998, tape recording.

Appendix A

June 3, 1998

Superintendent
Any City Public Schools
1000 Main St
Any City, MI 49000

Dear Superintendent,

Pursuant to my rights under the Freedom of Information Act, I respectfully request the following information for the school years 1995–1996 and 1996–1997:

1) A breakdown of the district's elementary, middle, and high school populations by race/ethnicity, gender, special education status, and free lunch eligibility based on fourth Friday counts;

2) A breakdown of the district's special education programs by race/ethnicity, gender, and free lunch eligibility;

3) The number of students recommended for expulsion, disaggregated according to race/ethnicity, gender, special education status, and free lunch eligibility;

4) The number of students actually expelled in the district, disaggregated according to race/ethnicity, gender, special education status, and free lunch eligibility;

5) For those students expelled please indicate in each case: the race/ethnicity, gender, special education status, and free lunch eligibility of the student, the reason for expulsion, whether or not alternative education or home instructional services were provided (pursuant to the Revised School Code, MCL 380.1311 (3)), and the state agency to which the expelled student was referred (pursuant to MCL 380.1311 (4));

6) The number of students who petitioned for reinstatement (pursuant to MCL 380.1311 (5)), disaggregated according to race/ethnicity, gender, special education status, and free lunch eligibility;

7) The number of students actually reinstated, disaggregated according to race/ethnicity, gender, special education status, and free lunch eligibility;

8) And if any students were reinstated, the length of expulsion prior to reinstatement.

If a race/ethnicity code is used, please include the key. Please identify African-American, Asian-American, Hispanic, Arab-American, and Native American students separately.

I would greatly appreciate receiving the above information at your earliest convenience, but at least within five (5) business days after receipt of this request as is required by the Freedom of Information Act (MCL 15.235, Sec. 5(2)).

Thank you very much for your prompt attention to this request.

Sincerely,

Sasha Polakow-Suransky
Policy and Research Analyst

Appendix B

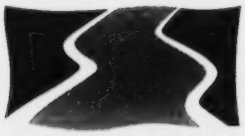
Key provisions of MCLA 380.1311 (School Expulsion) include:

Subsection 1.

- Any designated district employee now has the authority to suspend or expel a student guilty of gross misdemeanor or persistent disobedience. That person need only believe that "in the judgment of that person...the interest of the school is served by the authorization or order." There is no process for the family to challenge the decision. This is a change from the previous requirement that only the school board can make such an important decision.

Subsection 2.

- If a student is found with a weapon, or is accused of arson or rape, an administrator must expel the child permanently. If the child can convince the administrator that an exception is appropriate, the expulsion is stopped. It is difficult to imagine a child who is not highly regarded successfully arguing his or her case. Moreover, there is nothing in the law to provide immediate re-entry for a child who is found innocent of arson or rape in a court of law.
- There is no requirement to evaluate whether a child is dangerous, troubled, or frightened. The school has an obligation to call the Family Independence Agency or Community Mental Health to report the expulsion. The parents must be informed that the phone call has been made. Neither the agency nor the family has an obligation to take any action.
- Under this section, children—5th grade and under—who have been expelled for possession of a firearm or for threatening another person with a dangerous weapon must be out for a minimum of 90 school days (one semester). If expelled for reasons other than those named, the family may request reinstatement at any time. Children—6th grade and above—must be out for a minimum of 180 school days. A secondary school student who is expelled in spring of one year, and thus unable to return until spring of the second year, has the potential to lose credits for three full semesters.
- During this period, the child is barred from every public school in the state unless the school is specifically designated for such children. Many districts that maintain alternative programs do not admit children who fit this category. Many districts have absolutely no services for these children.
- A parent may apply for re-admission after the mandatory time out. The school district, however, is under no obligation to re-admit. Furthermore, school districts are excused from any obligation to assist the parent with the application. Those families least capable of maneuvering the system are without resources or assistance to get appropriate help for their children; they are without help to prepare the petition necessary to seek re-admission to school. In fact, there is no requirement that they must ever seek to have their children re-admitted.



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